2026 EMPLOYMENT LAW UPDATE



SMITH ANDERSON

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2026 Employment Law Update
October 28, 2026
PROGRAM AGENDA

8:30 – 9:00 a.m.	**Registration/Breakfast**
9:00 – 9:05 a.m.	**Welcome** *J. Travis Hockaday*
9:05 – 9:50 a.m.	**Risk Management Masterclass: How to Mitigate the Risk Around Retaliation Claims** *Kerry A. Shad, Shameka C. Rolla* *and Danielle B. Dobosz* In this session, employment litigators Kerry Shad, Shameka Rolla, and Dani Dobosz will review real-world examples of retaliation cases won and lost by employers. They will discuss how to recognize and respond to protected activity, how to avoid case-losing documentation, and best practices for creating documentation that could be helpful in litigation.
9:50 – 10:30 a.m.	**Delta Means Change: THC and Other High-Risk Issues** *J. Travis Hockaday* *James C. King* Many employers (especially multi-state employers) are struggling to navigate the increasingly complicated regulatory environment addressing the legality of cannabis and hemp-derived products. This session will provide an update on the state of the laws, information about proposed legislation, and the issues employers need to be considering now.
10:30 – 10:45 a.m.	**Morning Break**
10:45 – 11:30 a.m.	**AI Made the Call: Governing AI in Hiring, Performance, and Terminations** *Kevin M. Ceglowski* *Alena C. Carr* Employers increasingly rely on AI to screen applicants, manage performance, and inform termination decisions. Regulators and plaintiffs' lawyers are paying close attention. This session examines the legal risks employers face when AI makes or influences employment decisions, including potential liability under Title VII, state and local AI-specific employment laws, and the EEOC's guidance on algorithmic bias. Attendees will leave with a framework for auditing existing AI tools, negotiating vendor contracts to allocate risk appropriately, and building internal governance structures to defend the use of AI in employment decisions.
11:30 – 12:15 p.m.	**PWFA, Pregnancy, and Mental Health: Navigating the Accommodation Landscape** *Taylor M. Dewberry* *Lauren E. Davis* HR teams are fielding more accommodation requests and harder questions than ever before. This session dives into the PWFA's practical requirements, the growing complexity of mental health accommodations under the ADA, and strategies for managing the interactive process with confidence.

12:15 – 1:15 p.m.	**Lunch and Panel Discussion** **New NC Legal Update, IRCA Update, FLSA/FMLA Update** *J. Travis Hockaday, Kevin M. Ceglowski, Lauren E. Davis,* *Andrew W. Kragie and Alena C. Carr* *Moderator: Rosemary Gill Kenyon*
1:15 – 2:00 p.m.	**Fifty Shades of a Compliance Plan: When Employees are Here, There, and Everywhere** *Kimberly J. Korando* *Bella Thoren* Once dominated by federal law, employment law has been taken over by a rapidly growing patchwork of state and local laws. Employers with employees in multiple states are now confronted with varying and often conflicting compliance obligations. Are one-size fits all policies possible? Desirable? In this session, we will explore the highest-risk areas of state employment law along with a strategic compliance framework, a structured monitoring approach, and concrete next steps to identify gaps, reduce litigation exposure and build a sustainable multi-state compliance program.
2:00 – 2:15 p.m.	**Afternoon Break**
2:15 – 3:00 p.m.	**Breakout Sessions:**
Session A	**Ahead of the Curve: Navigating What's Next in Benefit Compliance** *Kara Brunk* The regulatory landscape for employee benefit plans continues to evolve at a rapid pace, presenting new challenges and opportunities for employers and plan sponsors. This session will explore the most significant compliance trends shaping benefit plan administration today, including recent developments in federal guidance, changes to reporting and disclosure requirements, and emerging enforcement priorities. Attendees will gain practical insights into how these developments affect health and welfare plans, retirement plans, and executive compensation arrangements. The discussion will also address proactive strategies for staying ahead of compliance risks and preparing for what lies ahead. Whether you are an in-house benefits professional, HR leader, or outside advisor, this session will equip you with the knowledge and tools to navigate the current compliance environment with confidence.
Session B	**Diversity, Equity, and Inclusion (DEI) Under the Microscope: Reevaluating Your Programs in the Executive Order Era** *Taylor M. Dewberry* *Tamika L. Henderson* Executive orders and legal challenges have put DEI initiatives under intense scrutiny. This session provides you with the tools to evaluate existing programs, identify potential vulnerabilities, and develop defensible approaches that align with your organization's values and today's legal realities.
3:15 – 4:00 p.m.	**EEO Update** *Zebulon D. Anderson* *Andrew W. Kragie* A discussion of EEOC enforcement trends and plans, as well as select cases representative of recent trends in EEO litigation.

WHO WE ARE

WHO WE ARE

PRACTICE GROUPS

EMPLOYMENT, LABOR AND HUMAN RESOURCES

The intersection of business, employment matters and the law is complex and often difficult to navigate. We approach this challenge in an effort to gain a thorough understanding of your culture and objectives. We bring a deep understanding of the law and a wealth of experience regarding its real-world application. We pride ourselves on being a vital and trusted adviser for our clients, offering responsiveness, keen insights, good judgment and a practical, solution-oriented perspective. Our employment, labor and human resources lawyers have received significant client, peer and business community recognition in such prestigious publications and ranking lists as *Chambers USA: America's Leading Business Lawyers*, *The Best Lawyers in America®, U.S. News – Best Lawyers®* "Best Law Firms" and *Martindale-Hubbel®*.

Our experience with a wide range of employment, labor and human resources issues enables us to work with our clients to assist them in building and maintaining an employer-of-choice reputation. We do this while minimizing the burden of regulatory requirements and the distractions of regulatory investigations and audits, employee disputes and union organizing. In addition to compliance and risk-management counseling, we develop and conduct training programs for human resources professionals and line managers, offering a range of complimentary compliance-support services. We also host an annual client conference that attracts more than 300 attendees each year.

When employers encounter litigation relating to employment discrimination, wrongful discharge or other employment-related issues, and when complaint investigations and compliance audits arise, we represent them with early risk assessment, dispute resolution services and trial advocacy.

Our clients include a wide range of regional, national and multinational corporations, emerging businesses and regulated industries. We handle employment matters nationwide for many global and publicly traded companies based in North Carolina and have frequently served as the lead employment counsel on some of their most complex, high-level transactions.

We operate as an employment and labor law boutique within a robust, full-service law firm. This affords us ready access to colleagues who focus their practice in such related areas as Employee Benefits and Executive Compensation; Environmental and OSHA; Government Contracts; Data Use, Privacy & Security; Tax; Corporate Governance; Non-Compete and Trade Secrets; and Intellectual Property.

Services:

- Wage and hour compliance
- Internal investigations

- Protecting employers: relationships and confidential information (non-competition agreements, trade secret protection)
- Employment-related litigation
- Government investigations, audits and administrative proceedings
- FMLA/ADA/Fitness-for-duty/drug-testing/absence-management program administration
- Workforce restructuring, downsizing, plant closings, merger and acquisition integration
- Executive employment and severance agreements
- Workplace harassment, training and investigations
- Human resources audits and risk management
- Affirmative action plans and OFCCP audits/corporate diversity
- Recruiting, hiring and employee selection
- Human resources policies and employee handbooks
- Workplace violence
- Union avoidance
- Temporary employees, agency staffing, independent contractors and telework programs
- Human Resources and manager training

Wage and Hour Compliance

- Enterprise-wide audits of exempt employee and independent contractor classifications for retail, hospitality, pharmaceutical, technology, distribution and other industry employers and development of strategies for reclassifying misclassified employees in ways to maximize compliance and minimize liability exposure
- Audits of time recording practices relating to donning/doffing, automatic clocking/deductions, and use of remote devices for work and development of practical solutions to maximize compliance and minimize liability exposure
- Enterprise-wide internal compensation analyses, development of processes for enhancing attorney-client privilege protection of analyses and risk management of such analyses
- Successful defense of wage and hour audits and complaint investigations conducted by the federal and state departments of labor involving donning/doffing/overtime, exempt employee classification issues and child labor issues
- Assistance with Service Contract Act issues in unionized and non-unionized settings

Internal Investigations

- Retained as special counsel by hospitals, banks, manufacturers, defense contractors and employers in a variety of industries to conduct internal corporate investigations into allegations of:
    - harassment, discrimination and employee misconduct, including allegations of pattern and practice sexual harassment and racial discrimination
    - employee embezzlement
    - kick-backs and favoritism in award of vendor contracts

    - procurement fraud in government contract bid by former employee whistleblower and assistance with self-reporting to government
- Retained in connection with allegations against high-ranking corporate officers and to identify root causes of management failures

Protecting Employers: Relationships and Confidential Information

- Drafted confidentiality, non-solicitation and non-competition agreements for global and national employers
- Developed Bring Your Own Device (BYOD) policies and employee social media policies
- Designed exit procedures to maximize protection of company information upon employee departure

Government Investigations, Audits and Administrative Proceedings

- Successfully represented leading employers before the United States Equal Employment Opportunity Commission (EEOC) and state and local fair employment practices commissions across the country in connection with investigations of single claimant and class allegations
    - These investigations have involved EEOC national priority issues, including challenges to enterprise-wide leave policies, criminal records criteria and testing, and have involved non-employee class representatives from advocacy groups
- Retained by employers after conclusion of cause findings for representation during the conciliation process and risk management of potential liability exposure
- Successfully represented federal contractors, including Department of Defense contractors, in connection with Office of Federal Contract Compliance Program (OFCCP) pre- and post-award compliance audits (including corporate management reviews) and complaint investigations. The compliance audits have included inquiries into test validation, staffing agency employees and online recruiting processes and, in some cases, have begun with asserted desk audit liability nearing $1 million which were subsequently closed without any payment by contractor
- Successfully represented manufacturing, restaurant and hospitality, and retail employers in wage and hour audits and complaint investigations conducted by the federal and state departments of labor throughout the country involving donning/doffing in manufacturing plants, overtime, exempt employee classification and child labor issues, with some involving potential class exposure exceeding $1 million

FMLA/ADA/Fitness for Duty/Drug-Testing/Absence Management Program Administration

- Led interdisciplinary publicly traded Fortune 500 corporate ADA task force charged with identifying Title I and Title III compliance issues; reviewing and modifying corporate policies, procedures and practices including medical testing, qualification standards and test administration accommodation

- Developed and integrated corporate policies for hospitals, banks and pharmaceutical, manufacturing and technology companies regarding FMLA/STD/ADA reasonable accommodation leave/workers' compensation leave and absence management
- Developed fitness for duty programs including functional capacity testing for manufacturing, healthcare and distribution worksites
- Developed and conducted manager/supervisor ADA/FMLA/absence management training programs
- Reviewed and developed voluntary and mandatory pre-employment, reasonable suspicion and random drug and alcohol testing programs for multistate employers

Workforce Restructuring, Downsizing, Plant Closings, Merger and Acquisition Integration

- Retained by global and publicly traded leading employers to design employee selection and staffing processes, voluntary separation programs, early retirement incentive programs and group termination programs and advise internal corporate task forces charged with such responsibilities
- Developed OWBPA-compliant releases and demographic disclosures, including those involved in complex multisite rollouts over time
- Assisted numerous companies with determining Worker Adjustment and Retraining Notification (WARN) notice requirements and developing WARN notifications
- Conducted internal adverse impact and EEO risk analyses for pre-rollout adjustments, assisted clients in assessing risk and identifying strategies to minimize the risk associated with the proposed actions
- Advised internal corporate teams charged with developing internal and external communications on reorganization activities
- Developed internal processes for enhancing attorney-client privilege protection of reorganization-related corporate documents
- Labor and employment merger and acquisition due diligence

Executive Employment and Severance Agreements

- Negotiated, reviewed and drafted executive employment, non-compete, change in control and severance agreements on behalf of executives and companies

Workplace Harassment, Training and Investigations

- Retained to revise harassment policies and investigation procedures to remedy compliance deficiencies and risk management failures resulting from commonly flawed off-the-shelf policies
- Retained to develop and conduct numerous employee awareness and manager/supervisor training programs or, in some cases, to assist in the evaluation and selection of vendor training programs
- Directed crisis management teams charged with diffusing threats of criminal arrest/prosecution and media disclosure

- Retained as special counsel to conduct internal corporate investigations into allegations of harassment, discrimination and employee misconduct, including allegations of pattern and practice sexual harassment and racial discrimination and allegations against high-ranking corporate officers

Human Resources Audits and Risk Management

- Developed internal process and templates for human resources compliance audits of policies, procedures, practices and records along with processes for enhancing attorney-client privilege protection of audit findings
- Provided advice on options and strategies for handling particular hiring, termination, promotion, reassignment and performance management scenarios, particularly with regard to underperforming employees, employees with health issues and whistleblowers
- Conducted internal adverse impact and EEO risk analyses for pre-reorganization rollout adjustments and internal compensation equity
- Developed and conducted numerous training programs for supervisors on documentation, performance management, discipline and discharge
- Drafted and negotiated numerous severance agreements

Affirmative Action Plans and OFCCP Audits/Corporate Diversity

- Reviewed, developed and updated numerous Executive Order 11246, VEVRAA and Rehab Act affirmative action plans and advised companies on all aspects of affirmative action, including appropriate statistical analysis for adverse impact calculations
- Successfully represented federal contractors in connection with Office of Federal Contract Compliance Program (OFCCP) pre- and post-award compliance audits (including corporate management reviews) and complaint investigations brought pursuant to Executive Order 11246, Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974
- Successfully defended challenges to test and other selection criteria validation
- Successfully defended class complaints, including those involving non-employee class representatives from advocacy groups
- Provided legal support and general business advice to manufacturers, retail businesses and pharmaceutical companies on establishing workplace diversity programs

Recruiting, Hiring and Employee Selection

- Advised employers on background and reference checking requirements and procedures, including Fair Credit Reporting Act authorization and disclosure requirements and e-Verify
- Advised employers on validation requirements and procedures for employment tests, physical fitness requirements and other selection criteria
- Assisted employers in virtually every industry with developing recruiting and employee selection processes and documentation procedures

- Developed and presented numerous training programs for supervisors on interviewing and employee selection

Human Resources Policies and Employee Handbooks

- Authored leading North Carolina policy and form book
- Reviewed and developed hundreds of employee handbooks, Human Resources policies and procedures manuals and corporate codes of conduct – many for clients with workforces in multiple states
- Developed Bring Your Own Device (BYOD) and employee social media policies
- Developed harassment/investigation and religious accommodations procedures
- Developed and integrated corporate policies regarding FMLA/STD/ADA reasonable accommodation leave/workers' compensation, leave for fitness for duty and absence management, and developed corporate leave donation and sharing programs
- Led interdisciplinary corporate ADA task force charged with identifying Title I and Title III compliance issues; reviewing and modifying corporate policies, procedures and practices including medical testing, qualification standards, and test administration accommodation; and developing and conducting corporate manager/supervisor compliance training
- Assisted publicly traded companies in financial, healthcare, consulting and manufacturing with developing and implementing corporate record retention and destruction policies
- Advised numerous companies on the legal and practical aspects of transitioning to paperless Human Resources policies

Workplace Violence

- Advised numerous companies on handling specific threats of workplace violence
- Developed and reviewed workplace violence prevention programs and conducted related workplace training
- Served as counsel to employers' multi-disciplinary threat assessment teams

Union Avoidance

- Advised manufacturing and retail companies on handling of specific threats of union organization
- Developed union avoidance programs for global companies and conducted related training

Temps, Agency Staffing, Independent Contractors, Telework Programs

- Advised companies on the legal and practical issues of implementing a telecommuting workforce and individual telecommuting arrangements
- Advised companies on the legal and practical issues of creating an internal temporary workforce

Human Resources and Manager Training

- Developed a comprehensive training institute offering more than 50 programs to human resources professionals, business managers and line supervisors. Topics included ADA, affirmative action, EEO, employee relations, FMLA, harassment, hiring, investigations, policies, union avoidance, workplace violence, and supervisor/manager responsibilities
- Developed highly participatory and mock trial training exercise for Human Resources professionals and investigators for a large global pharmaceutical company in which they experienced first-hand how their decisions and actions played out in front of a jury. The program was customized to the client's policies and workforce
- Developed highly participatory and mock trial training exercise for supervisors in which participants experience first-hand how their decisions and actions play out in front of a jury. The program is customized to client's policy and workforce and has been delivered to employers in a wide range of industries across the country

EMPLOYEE BENEFITS AND COMPENSATION

The right employee compensation and benefits are critical to recruiting and retaining top employees. But these programs raise complex business, personnel and legal considerations, and they require careful balancing of cost, employee performance and corporate culture. Our lawyers work with clients to help them establish comprehensive long-term plans and to respond effectively to changing conditions and immediate needs.

Our lawyers design, review and implement a wide array of compensation and benefits programs across a full range of industries. We provide counsel regarding the ERISA, tax, securities and accounting considerations applicable to these programs.

Primary Services:

- 401(k) and profit sharing plans
- Employee Stock Ownership Plans (ESOPs)
- Cafeteria plans
- Welfare benefit plans, including group medical plans (insured and self-funded)
- Stock option and stock purchase plans
- Executive compensation
- Incentive plans
- Nonqualified deferred compensation plans
- Severance packages
- Prohibited transaction exemptions

Qualified Retirement Plans: We design, review, and implement 401(k) and profit sharing plans, ESOPs and other qualified retirement plans. We assist clients in complying with the ever-changing tax and ERISA requirements applicable to these plans, represent clients in IRS and DOL audits of their plans, and work with clients in structuring corrections for operational and fiduciary errors.

Welfare Benefit Plans: We provide similar counsel and representation with respect to cafeteria and other welfare benefit plans and issues, including group medical, life and other insurance coverage, health and dependent care flexible spending accounts, education assistance programs, COBRA and HIPAA.

Equity Compensation: We provide stock option and stock purchase plans and assist our clients with the tax, securities and accounting aspects of these plans, including tax reporting and withholding requirements, SEC disclosure and filing requirements, and expensing for financial accounting purposes.

Executive Compensation: We negotiate and prepare executive compensation packages for the officers of companies ranging from venture-backed startups to mature, publicly traded companies, and we advise compensation committees and boards of directors in developing appropriate compensation programs for

their companies. Our experience includes structuring equity compensation, deferred compensation, severance, and golden parachute arrangements.

Mergers and Acquisitions: We represent acquiring and target companies in corporate transactions and have experience negotiating how compensation and benefits programs will be treated in deals, as well as guiding our clients through the difficult issues that arise post-closing when compensation and benefits programs are eliminated or combined.

Controversies and ERISA Litigation: Our ability to provide sophisticated compliance representation is enhanced by our experience with governmental agencies and benefits-related litigation in disputes involving hundreds of millions of dollars in plan assets. We regularly represent large employers in obtaining resolution with the IRS and DOL and have successfully defended employers and fiduciaries in claims ranging from breach of duties to imprudent investing.

Additional Services: Our attorneys work closely with other attorneys at Smith Anderson, especially those who practice in the areas of tax, securities, corporate and employment law, so that our clients have the benefit of a comprehensive analysis of the legal issues related to their benefits and compensation programs.

Our Clients: Our clients range from emerging growth high-tech and biotech companies located in the Research Triangle Park and throughout the Southeast to major North Carolina banks and public utilities and local and regional manufacturing, retail and services businesses.

Our Lawyers: The lawyers in our Employee Benefits and Compensation group have experience counseling and representing clients in all aspects of employee benefits and compensation matters. They actively participate in local and national benefits groups and in the North Carolina and American Bar Associations.

EMPLOYMENT LITIGATION

Employment litigation is an unfortunate yet unavoidable part of doing business today. Our firm is experienced and well-equipped to help your company through the challenges and complexities of these cases. We are effective problem solvers and adept at risk management through early case assessment and use of alternative dispute resolution. At the same time, we are aggressive advocates who regularly defend our clients in matters litigated in state and federal courts across the country.

Whether in individual, class or collective actions, we offer our clients experience, value, efficiency and knowledge of their business and its objectives. We provide a high level of skill, responsiveness and partner involvement, all focused on efficiently achieving defined business and litigation objectives. We offer well-informed legal answers and practical solutions.

Our firm represents companies doing business in North Carolina, as well as North Carolina-based companies doing business in other states; our work stretches coast-to-coast, from New York to California and from Florida to Minnesota. We also partner as local counsel with national law firms who need North Carolina lawyers with in-state connections and experience.

NON-COMPETE & TRADE SECRETS

Proprietary information and business relationships are critical business assets, and our attorneys can help employers protect them. From drafting employment agreements and restrictive covenants to managing high-stakes litigation involving injunctions and emergency relief, our non-compete and trade secrets practice offers wide-ranging experience in matters concerning trade secret misappropriation, confidentiality and non-disclosure agreements, covenants not to compete, unfair competition, employee raiding and other issues concerning the protection of confidential information and business relationships.

OSHA

OSHA enforcement is on the rise and with it the need for experienced and practical legal guidance. Smith Anderson's OSHA lawyers provide substantial resources to help clients navigate the maze of worker safety and OSHA regulations, which can critically impact operations, finances, personnel and sustainability. We assist businesses throughout North Carolina and the Southeast, ranging from start-ups to publicly-traded companies, in connection with their worker safety and OSHA-related needs. Our clients include manufacturers, pharmaceutical companies, convenience store chains, technology and biotechnology companies, health care professionals, builders, materials suppliers, developers, contractors, lenders, investors and public utilities.

MEET OUR TEAM

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"Zeb is a fantastic lawyer. He is consistently responsive, pragmatic and practical." ***– Client quote in Chambers USA***

OVERVIEW

Zeb Anderson has devoted his career to the representation of private and public employers in connection with all aspects of employment-related litigation. He has represented employers in state and federal courts and before government agencies throughout North Carolina and in other jurisdictions across the country. His experience includes litigation involving employment-related statutory, as well as common law, claims arising under federal and state law, and issues that arise when employees leave to join competitors, including non-compete and non-solicitation restrictions, trade secret misappropriation, tortious interference, and unfair competition.

EXPERIENCE

- Since 2000, served as lead counsel in hundreds of cases in various industries involving the defense of employment-related claims, including alleged discrimination, harassment, retaliation, wrongful discharge, civil rights violations, labor standards and wage and hour violations, denial of employee benefits, and workplace violence.
- Served as lead counsel in aviation industry-based class and collective action alleging violation of wage and hour laws in connection with baggage-related tip and service charge practices.
- Represented global pharmaceutical company in series of class and collective actions filed in Arizona, California, and New York alleging that the company's failure to pay its pharmaceutical sales representatives overtime for hours worked in excess of 40 hours per week violated the FLSA and state law.
- Defended employer in the material handling industry that was sued in Florida state court by Fortune 100 company that claimed the employer misappropriated its trade secrets, tortiously interfered with its employee relationships and otherwise unfairly competed with it when the employer hired 19 of its at-will employees over the course of several months.

- Defended employer in the entertainment industry and a newly-hired employee who was sued in Michigan state court by a competitor who previously employed that employee and who claimed that the employee breached and the employer tortiously interfered with a non-solicitation agreement after the employee joined the employer.
- Represented multiple insurance companies in lawsuits brought in state and federal courts in North Carolina that involved allegations of non-compete and non-solicitation agreement breach by insurance agents who left one company to join a competitor.
- Represented medical device distributor in lawsuit filed in federal court in North Carolina that sought to restrain the sales activities of former sales employees who left to join a competitor, but were bound by non-solicitation agreements.
- Represented many employers in the health care, pharmaceutical, logistics/transportation, and other industries in lawsuits throughout the state and federal courts in North Carolina involving allegations of non-compete and non-solicitation agreement breach, trade secret misappropriation, tortious interference, and unfair competition.
- Provided advice and counseling to employers in connection with all aspects of employment law, ranging from EEO issues to non-compete agreements and trade secret protection.
- Advised a global financial services technology company on the employment-related aspects of its acquisition of a leading provider of deal analytics and valuation technology.

CREDENTIALS

Recognition

- *Business North Carolina* Legal Elite, Employment (2017, 2023-2024)
- *Chambers USA,* Labor & Employment (2015-2026)
- *Benchmark Litigation*, North Carolina Labor and Employment Star (2018-2021, 2023-2024)
- *The Best Lawyers in America*®
  - Employment Law-Management (2018-2027)
  - Litigation - Labor and Employment (2016-2027)
  - Trade Secrets Law (2027)
  - "Lawyer of the Year," Raleigh, Litigation - Labor and Employment (2023)
- Super Lawyers
  - North Carolina Super Lawyers (2012-2027)
  - North Carolina Super Lawyers Rising Star (2009)
- Martindale-Hubbell AV Preeminent Rated

Education

- University of Virginia School of Law, J.D., 1994
  - Editorial Board, *Virginia Law Review*, 1992-1994
  - Order of the Coif
- Duke University, B.A., magna cum laude, 1991

Bar & Court Admissions

- All North Carolina State Courts
- North Carolina
- Supreme Court of the United States
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Kara Brunk

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"Kara is very thorough and very professional. She provides a wealth of insight and knowledge." ***– Client quote in Chambers USA***

OVERVIEW

Kara is a trusted advisor to public, private, governmental, and non-profit employers on all aspects of employee benefits.

With over a decade of experience and a deep understanding of ERISA, the Internal Revenue Code, and related federal regulations, Kara counsels clients on design, compliance, and administration of qualified retirement plans, health and welfare benefits, and deferred compensation arrangements. Recognized for her extensive knowledge and skills, Kara has earned accolades from publications such as *Business North Carolina, Chambers USA ,* and more.

Whether helping employers to achieve day-to-day compliance within complex regulatory frameworks or navigate benefits issues in corporate transactions, Kara provides clear, strategic counsel tailored to each client's business objectives.

Kara regularly advises on:

- 401(k), 403(b), and defined benefit pension plans
- 457 deferred compensation plans
- Health and welfare plans, including Affordable Care Act, COBRA, and HIPAA compliance
- ERISA fiduciary governance and plan corrections (EPCRS, VFCP, and DFVCP)
- Benefits due diligence and integration in mergers and acquisitions
- IRS and DOL audits and investigations

Kara also enjoys being an extension of a client's internal team by partnering with HR professionals and in-house counsel to ensure legal compliance while managing risk and promoting competitive, compliant benefit programs.

EXPERIENCE

- Represented a Nasdaq-listed bank holding company with employee benefits matters related to its assumption of all customer deposits and certain other liabilities, and acquisition of substantially all loans and certain other assets, of a bridge bank, as successor to the failed bank subsidiary of a Nasdaq-listed bank holding company, from the Federal Deposit Insurance Corporation, as receiver for the bridge bank.
- Advised a multistate skilled nursing, home care, and I/DD company with employee benefits-related matters in its definitive agreement to acquire the largest home care company in Rhode Island.
- Represented a North Carolina bank and its parent with respect to the employee benefits aspects of an approximately $220 million merger with another bank.
- Advised a life sciences company with employee benefits-related matters in its acquisition of a clinical manufacturing facility for an undisclosed amount.
- Advised a private equity fund and its contract research solutions portfolio company in employee benefits matters related to their acquisition of a statistical programming, consulting, and data management company.
- Advised a life sciences company on its acquisition of a clinical manufacturing facility for an undisclosed amount.
- Advised a company specializing in video game and software development on employee benefits matters related to the definitive agreement to acquire a company that developed a presence-based social networking platform connecting users online through live video on mobile and desktop apps.
- Advised a provider of services to people with intellectual and/or developmental disabilities on employee benefits matters related to the acquisition of another provider of support and services to help individuals with developmental and physical disabilities.
- Amending and restating qualified retirement plans to comply with the Pension Protection Act and other changes in the law.
- Advising employers regarding designing and administering benefits plans in compliance with the Internal Revenue Code and ERISA.
- Drafting and revising health and welfare plan documents and summary plan descriptions.
- Assisting employers with identifying and correcting plan errors through DOL and IRS compliance programs.
- Reviewing and amending executive compensation arrangements.
- Advised a leading CRO in Asia on the employee benefits aspects of its acquisition of CRO assets in the United States.
- Advised a publicly-traded health information technologies and clinical research company on the employee benefits aspects of its sale of a consulting line of business.
- Advised a private equity fund on the employee benefits aspects of its acquisition of a specialty pharmaceutical company.
- Advised a leading contract research organization in a definitive agreement to acquire a provider of contract research, clinical and regulatory, and other consulting services. Advised specifically on benefits, reps, warranties, and covenants, conducted due diligence, and helped the company navigate integration issues.

- Advised a closely held company, a leading provider of tailored operational, training, and technical solutions in support of national security missions, in the sale of its business.

CREDENTIALS

Recognition

- *Chambers USA*, Employee Benefits & Executive Compensation (2021-2026)
- *Business North Carolina* Legal Elite, Young Guns (2024-2026)
- *Best Lawyers: Ones to Watch® in America,* Employee Benefits (ERISA) Law (2021-2024)
- North Carolina *Super Lawyers*, Rising Stars (2020-2023)
- Staff Member and Contributing Editor, *North Carolina Law Review*, 2010-2012

Education

- University of North Carolina School of Law, high honors, J.D., 2012
  - Order of the Coif
- University of North Carolina at Chapel Hill, with distinction, B.A. in Political Science, 2009
  - Phi Beta Kappa

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OVERVIEW

Alena Carr focuses her practice on Workplace Law, advising organizations on a range of employment matters. She helps employers navigate compliance issues, conduct internal investigations, and draft employment agreements.

Before joining Smith Anderson, Alena completed two summer fellowships with the Office of the General Counsel at a large nonprofit health system. In that role, she researched healthcare litigation, compliance, and regulatory matters; drafted legal memoranda; and gained insight into healthcare transactions and in-house legal operations.

In her spare time, Alena enjoys attending live concerts and cheering on the Philadelphia Eagles.

NOT ADMITTED TO PRACTICE IN NORTH CAROLINA

CREDENTIALS

Education

- North Carolina Central University School of Law, J.D., summa cum laude, 2026
  - Executive Editor, Science and Intellectual Property Law Review
  - Secretary, Black Law Students Association (BLSA)
- University of North Carolina at Charlotte, B.A., magna cum laude, 2023

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"He has an incredible work ethic and is always available when needed. He offers practical useful advice that you can operationalize. He is a great business partner who relates to and understands employer needs." ***– Client quote in Chambers USA***

OVERVIEW

Kevin Ceglowski advises employers, boards, and private equity sponsors on their most complex and sensitive workplace challenges with practical, business-minded advice. He has an ability to translate complex regulatory requirements into plain-English solutions that align with his client's business goals. A partner with Smith Anderson's Workplace Law team, Kevin counsels local, regional, national, and global companies on the full spectrum of employment law issues, from daily HR compliance and workplace investigations to litigation and high-stakes transitions such as reductions in force and mergers and acquisitions. Kevin works closely with executives, HR leaders, and in-house counsel to anticipate problems before they become disputes.

Kevin defends employers in discrimination and retaliation claims, develops compliant multistate policies and handbooks, and drafts and enforces restrictive covenants, including non-compete, non-solicitation, and forfeiture-for-competition agreements. He also regularly assists clients as they navigate reductions in force, WARN and OWBPA compliance, severance and retention programs, executive agreements, wage and hour classification analyses, and employment issues in M&A transactions. Kevin is frequently called on to lead management training, policy reviews, and strategy sessions designed to minimize litigation risk and preserve company culture during times of growth or transition.

He speaks regularly to industry and professional groups on workforce transitions, executive compensation, restrictive covenant law, and the responsible use of artificial intelligence in employment practice.

Outside of work, Kevin enjoys time with his family, reading (and collecting more books than he can finish), and domestic and international travel.

EXPERIENCE

- Advised an international private equity investor and its portfolio Contract Research Organization on employment matters related to the acquisition of a U.S.-based CRO, enhancing the platform's global presence and supporting its strategy to build a leading independent specialist CRO.
- Represented a private equity-backed telecommunications engineering, construction, and infrastructure company in employment matters related to its equity purchase of a regional specialized construction contractor providing fiber optic and underground utility services.
- Represented a leading provider of elevator maintenance, repairs, and modernization services in the acquisition of an elevator service company.
- Serves as lead employment lawyer in merger and acquisition transactions across industries, resolving the transition issues embedded in the deal: worker misclassification, leased employee and professional employer organization arrangements, non-competition agreements, and executive employment agreements.
- Drafts employment agreements, severance agreements, and restrictive covenant agreements for private and publicly traded companies.
- Designs and executes reductions in force and reorganizations for regional and national employers, including WARN Act and OWBPA compliance.
- Advises on high-risk, sensitive employment matters involving senior executives and reputational risk.
- Defended employers in federal and state courts and before administrative agencies in harassment, discrimination, retaliation, and wage and hour matters.

CREDENTIALS

Recognition

- *Chambers USA*, Labor & Employment (2017-2026)
- *The Best Lawyers in America*®
  - Employment Law - Management (2023-2027)
  - Litigation - Labor and Employment (2025-2027)
- *Benchmark Litigation*, North Carolina Litigation Star (2023)
- *Business North Carolina* Legal Elite, Employment (2015-2017, 2019-2022, 2025-2026)
- Super Lawyers
  - North Carolina Super Lawyers (2026-2027)
  - North Carolina Super Lawyers Rising Star: Employment & Labor (2012-2016)

Education

- Campbell University School of Law, J.D., 2006
  - Executive Editor, *Campbell Law Review*
- North Carolina State University, B.S. Business Administration, 2001

Bar & Court Admissions

- North Carolina
- South Carolina
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Lauren E. Davis

ATTORNEY

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OVERVIEW

Lauren Davis is a member of Smith Anderson's Employment, Labor and Human Resources practice group. Since joining the firm in 2021, Lauren has worked closely with employers across a broad spectrum of workplace law matters. Her practice includes advising clients on employment issues in the context of corporate transactions, preparing and negotiating employment-related agreements, and developing comprehensive multi-state employee handbooks and workplace policies.

Lauren's approach to her work is rooted in her understanding of the dynamic nature of employment law and a commitment to helping employers navigate the legal landscape with confidence and clarity. Whether supporting day-to-day compliance needs or offering counsel during pivotal business changes, she brings a thoughtful perspective and meticulous attention to detail to each matter she handles.

Outside of her legal practice, Lauren is an avid fan of Michigan State University basketball and football. She also enjoys dancing, traveling to new destinations, and attending musicals.

EXPERIENCE

- Advised an international private equity investor and its portfolio Contract Research Organization on the acquisition of a U.S.-based CRO, enhancing the platform's global presence and supporting its strategy to build a leading independent specialist CRO.
- Advised a sports software company on its acquisition of an enterprise business offering proprietary game data and analytics tools to elite sports organizations.

CREDENTIALS

Education

- UNC Chapel Hill School of Law, J.D., with honors, 2021

- Institute Editor, *North Carolina Banking Institute Journal*
- Certified Student Practitioner, *Startup NC Law Clinic*
- Dean's Fellow
- Vice President, Carolina Teen Court Assistance Program
- Vice President, Carolina Law Ambassadors
- Mentor Coordinator, Women in Law

- Michigan State University, B.A., Finance, with honors, 2018

Bar & Court Admissions

- North Carolina

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Taylor M. Dewberry

CHIEF DIVERSITY OFFICER & ATTORNEY
Co-Chair, D&I Committee

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OVERVIEW

Taylor Dewberry is Smith Anderson's Chief Diversity Officer and an attorney in the firm's Employment, Labor, and Human Resources practice group. Her law practice focuses on employment-related counseling and defending employers against claims involving discrimination, wrongful discharge, retaliation, harassment, and civil rights claims. She has represented clients in state and federal courts and agencies throughout North Carolina. As Chief Diversity Officer, Taylor works closely with the firm's Management and D&I Committee in creating and implementing D&I programs and policies to recruit and retain diverse talent, support professional development, and foster an inclusive workplace culture.

Taylor continuously seeks innovative ways to advance Smith Anderson's D&I mission, with her vision rooted in the belief that every individual should feel included and free to be their authentic selves. Her strategic approach to advancing D&I is not only about promoting a culture of belonging within Smith Anderson, but also about influencing the broader legal profession and the overall community. *Triangle Business Journal* named Taylor a **2024 Leader in Diversity** and *North Carolina Lawyers Weekly* and the *Mecklenburg Times* recognized Taylor as one of **North Carolina's 50 Most Influential Women** in 2024 for her leadership, business acumen, mentoring, and community involvement.

EXPERIENCE

- Advised a Nasdaq-listed pharmaceutical development company in the acquisition of a specialty dermatology company for up to $51 million in up-front and contingent consideration.
- Advised a global contract research organization and drug development services company in a transaction to acquire a provider of mobile-connected self-service platform solutions for decentralized clinical trials that included cross-border employment issues for employees and contractors located in Europe and India.
- Advised a life sciences company on its acquisition of a clinical manufacturing facility for an undisclosed amount.
- Advised a specialty pharmaceutical company in its acquisition of a private pharmaceutical company focusing on pediatric medications.
- Advised a leading contract research organization on the employment law aspects of a definitive agreement to acquire a provider of contract research, clinical and regulatory, and other consulting

services.

- Defended employers against claims involving discrimination, wrongful discharge, retaliation, harassment, wage and hour, and civil rights claims.
- Represented clients in investigations conducted by the Equal Employment Opportunity Commission.
- Presented on workplace issues, such as recruiting, onboarding, and sexual harassment law.
- Conducted an internal investigation into workplace harassment.

CREDENTIALS

Recognition

- *Best Lawyers: Ones to Watch® in America,* Labor and Employment Law – Management (2022-2027)
- North Carolina Bar Association's Robinson O. Everett Professionalism Award (2025)
- *Triangle Business Journal,* Leaders in Diversity Award (2024)
- *Mecklenburg Times* and *North Carolina Lawyers Weekly,* North Carolina's 50 Most Influential Women (2024)
- The National Black Lawyers Top 100, Top 40 Under 40 (2020)
- Executive Notes Editor, *Washington University Journal of Law and Policy*

Clerkships

- Judicial Intern, Chief Justice Mark Martin, North Carolina Supreme Court
- Judicial Intern, Judge James A. Wynn Jr., United States Court of Appeals for the Fourth Circuit

Education

- Washington University School of Law, *cum laude,* J.D., 2017
- Stanford University, B.A., *with honors*, American Studies with a minor in African-American Studies, 2014

Bar & Court Admissions

- North Carolina
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Dani B. Dobosz

ATTORNEY

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OVERVIEW

Dani Dobosz is an attorney with Smith Anderson's Litigation practice, serving clients on a wide range of business disputes, including contract and business tort claims, employment litigation, and non-compete and trade secrets.

While in law school, Dani completed an externship for the Honorable Judge James A. Wynn of the United States Court of Appeals for the Fourth Circuit.

In her free time, Dani enjoys international cooking, hiking, and exploring North Carolina's many waterfalls.

CREDENTIALS

Education

- University of North Carolina School of Law, J.D., with high honors, 2022
  - Class Rank: 2nd
- Yale University, B.A., magna cum laude, 2016

Bar & Court Admissions

- All North Carolina State Courts
- North Carolina
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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OVERVIEW

Hope Garber is a member of Smith Anderson's litigation team, where she works to defend the contractual rights and intellectual property of clients from a diverse set of industries, including the agricultural, aviation, and pharmaceutical sectors. She has experience with cases involving breach of contract, copyright and trademark infringement, unfair trade practices, non-compete clauses, and business torts.

Hope also serves on Smith Anderson's Recruiting Committee.

Before joining Smith Anderson, Hope practiced with a New England law firm, focusing on class action defense and complex commercial litigation. She enjoys spending time outside with her husband and their three children.

EXPERIENCE

- Represented an electric aerospace company in dispute with prototype airframe supplier that claimed exclusive rights to participate in aircraft development and manufacturing program and sought hundreds of millions of dollars in damages. We filed counterclaims, obtained a temporary restraining order requiring return of our client's intellectual property, and obtained a declaratory judgment establishing that our client properly terminated the underlying contract and the supplier had no further right to participate in the program. The matter was ultimately resolved without any payment by our client.

CREDENTIALS

Recognition

- *Best Lawyers: Ones to Watch® in America,* Commercial Litigation (2025-2027)

Clerkships

- Law Clerk to the Honorable Don R. Willett, U.S. Court of Appeals for the Fifth Circuit
- Law Clerk to the Honorable Donald W. Molloy, U.S. District Court for the District of Montana

Education

- Duke University School of Law, J.D., magna cum laude
  - Order of the Coif
  - National Order of Scribes
  - Co-Director, Veterans Assistance Project
  - Managing Editor, *Alaska Law Review*
- Bates College, B.A, magna cum laude
  - Phi Beta Kappa

Bar & Court Admissions

- North Carolina
- Massachusetts
- Maine (inactive)
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

SMITH ANDERSON
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Tamika L. Henderson

ATTORNEY

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OVERVIEW

Tamika Henderson helps employers and organizational leaders navigate workplace issues with practical guidance informed by more than 20 years of experience in litigation, administrative proceedings, and day-to-day workplace counseling. Before joining Smith Anderson, Tamika served as Special Deputy Attorney General and Section Head for Services to State Agencies at the North Carolina Department of Justice, where she led a team handling civil matters in state and federal courts, as well as administrative matters.

Her extensive litigation background includes significant trial and appellate experience. She has served as first-chair counsel in more than 75 trials and evidentiary hearings before the North Carolina Office of Administrative Hearings, state superior courts, and federal district courts. She has led federal-court employment litigation under Title VII, the ADA, the ADEA, and 42 U.S.C. § 1983, handling matters from investigation through trial and appeal. She has briefed and argued before the North Carolina Court of Appeals and Supreme Court of North Carolina, and the U.S. Court of Appeals for the Fourth Circuit, and has appeared on brief before the U.S. Supreme Court.

In addition to her litigation practice, Tamika regularly advises executive leadership and human resources professionals at public and private companies on workplace investigations, EEOC charges and position statements, NLRB unfair labor practice charges, and workplace policies and risk mitigation strategies. Her experience across government, in-house, and private practice, including work with organizations in heavily regulated industries, gives her a broad perspective on the legal and practical considerations employers face in managing workplace issues.

Outside the office, Tamika is active in civic leadership, including service as a National Executive Board Member for Jack and Jill of America, Inc., and proudly serves as the “COO” of House Henderson with her husband, Peter, their three children, and two mini goldendoodles. She is also an enthusiastic reader and is always happy to recommend a good book.

CREDENTIALS

Recognition

- The John R. Larkins Award, State of North Carolina (2026)

- President's Lifetime Achievement Award, President Joseph R. Biden, Jr. (2024)

Education

- Indiana University School of Law, J.D., 2002
- Indiana University at Bloomington, B.A., 1999

Bar & Court Admissions

- Indiana
- North Carolina
- Supreme Court of the United States
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina
- U.S. District Courts for the Northern and Southern Districts of Indiana
- Wisconsin

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Jamison H. Hinkle

ATTORNEY

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OVERVIEW

Jamie Hinkle advises a wide range of clients on all aspects of their employee benefits and compensation programs. Much of his practice involves helping employers design and administer cost-effective retirement and health and welfare benefit plans while minimizing risks and administrative complications. His work includes helping ensure benefit plans comply with ERISA, the Internal Revenue Code, HIPAA, COBRA, the North Carolina Insurance Code, and other federal and state laws as well as assisting employers correct operational errors and respond to IRS and Department of Labor (DOL) plan audits.

Jamie also frequently advises corporate clients ranging from start-ups to global publicly-traded companies with respect to the adoption and administration of annual and long-term incentive and bonus plans, nonqualified deferred compensation arrangements, and various equity-based compensation plans, including stock option, restricted stock, and restricted stock unit (RSU) awards. He works closely with the firm's business lawyers in addressing employee benefits and executive compensation due diligence, correction, and integration issues that arise in connection with mergers, acquisitions, and other corporate transactions.

In his practice, Jamie also frequently represents both executives and employers in negotiating and drafting executive employment agreements and severance agreements, including work on golden parachute (Code Section 280G) issues, supplemental executive retirement plans (SERPs), and other deferred compensation plans and related compliance issues under Code Section 409A.

Jamie practiced employee benefits and estate planning in the Raleigh office of a global law firm and with a national corporate firm before he joined Smith Anderson in 2000.

EXPERIENCE

- Advised numerous employers on 401(k) plan and design changes and regulatory amendments in response to COVID-19 concerns.
- Coordinated company-wide stock option repricing and exchange program for underwater stock options.
- Advised a Nasdaq-listed medical device company in the acquisition of a global leader in neuromodulation and rehabilitation medical devices for up $110 million in up-front and contingent consideration.
- Advised a Nasdaq-listed pharmaceutical development company in the acquisition of a specialty dermatology company for up to $51 million in up-front and contingent consideration.

- Advised a leading provider of patient support services on employee benefit issues in a definitive agreement to acquire a provider of mobile-based solutions.
- Designed and drafted equity compensation and bonus plans for various start-up companies.
- Represented employer in overhauling existing equity compensation awards for C-Suite officers.
- Prepared and filed corrective Top Hat Plan filings under DOL's Delinquent Filer Voluntary Compliance Program (DFVCP) for Fortune 100 company.
- Advised a leading pharmaceutical and biotech contract development and manufacturing organization (CDMO) on benefits and compensation issues in a definitive agreement to acquire a preferred provider of cGMP Biostorage and pharma support services for an undisclosed amount.
- Coordinated benefit plan corrections arising in sale of major pharmaceutical company.
- Advised terminating Multiple Employer Welfare Arrangement (MEWA) and Voluntary Employees' Beneficiary Association (VEBA) on IRS and DOL compliance issues and distribution of surplus assets.
- Advised insolvent client and officers and directors on potential criminal law violations associated with improper benefit plan terminations.
- Represented employer on 401(k) plan coverage and participation issues in connection with IRS contractor misclassification audit.
- Designed and drafted bespoke nonqualified deferred compensation retention plan for key executives of venture-backed start-up.
- Advised public pharmaceutical company on cash-out of target's stock options, coordination of severance benefits, and post-closing benefits integration.
- Represented a global biopharmaceutical and outsourcing services company in favorably resolving DOL audit of 401(k) Plan reporting failures.
- Coordinated revisions to major pharmaceutical company's self-insured health plan to comply with health care reform rules.
- Designed Section 409A-compliant staggered severance benefits plan for departing executives of publicly-traded pharmaceutical company.
- Advised multinational Fortune 500 provider of integrated healthcare services on benefit plan restructuring and integration matters in merger with NYSE-listed technology services company, creating a leading tech-enabled healthcare service provider with a market capitalization of $17.6 billion at closing.
- Advised leading healthcare services provider on benefits and executive compensation issues in its $60 million acquisition of a global sourcing company.
- Advised a leading provider of financial software to U.S. financial institutions on employee benefits, and executive compensation issues and Section 280G (golden parachute) cleansing vote in its reverse triangular merger with a private equity-backed company.

CREDENTIALS

Recognition

- *Chambers USA*, Employee Benefits & Executive Compensation (2023-2026)
- *The Best Lawyers in America*®, Employee Benefits (ERISA) Law (2013-2027)
- North Carolina Super Lawyers Rising Star, ERISA (2013)

Education

- University of North Carolina, J.D., *with honors*, 1996
- Duke University, A.B., 1991

Bar & Court Admissions

- North Carolina
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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J. Travis Hockaday

ATTORNEY
Chair, Workplace Law

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"Travis is a great resource for us. He is responsive, thorough and accurate in his advice." ***– Client quote in Chambers USA***

OVERVIEW

Travis Hockaday leads the firm's Employment, Labor, and Human Resources practice. He is recognized by *Best Lawyers*® 2021 in Litigation - Labor and Employment, and by *Benchmark Litigation* as a North Carolina Labor & Employment Star for 2021. His practice focuses on providing counseling and risk management advice on significant employment-related matters to both public and private companies across a variety of industries, identifying and managing employment-related issues in mergers, acquisitions, and reorganizations, and drafting complex employment and severance agreements for companies and C-suite executives. From 2010 to 2013, Travis provided counseling and risk management services on employment-related matters to a Fortune 500 company's legal department under a secondment arrangement.

Travis has extensive experience assisting employers with worker classification and co-employment issues, work health (ADA, FMLA, GINA) matters, and wage and hour compliance. He also conducts investigations into discrimination and harassment complaints, develops workplace policies, and advises employers on terminations, disciplinary actions, and handling employee grievances. Travis regularly defends employers in federal and state courts and agencies (including the EEOC, U.S. DOL, and U.S. DOJ) against discrimination, harassment, retaliation, wage and hour, and whistleblower claims (including systemic discrimination claims).

Travis frequently develops and delivers training programs for executives, managers, and human resources professionals, and is a co-author of the *North Carolina Human Resources Manual*, the 700-page authoritative guide for North Carolina employers.

EXPERIENCE

- Defending employers against claims involving discrimination, wrongful discharge, retaliation, harassment, and civil rights claims.
- Defending wage and hour, ERISA, and other benefit-related claims.

- Representing clients in investigations conducted by both federal and state Departments of Labor, the Equal Employment Opportunity Commission, and the U.S. Department of Justice.
- Representing clients before the North Carolina Division of Employment Security.
- Advising clients regarding the development of effective employee handbooks, policies, and practices.
- Representing employers and individuals in connection with allegations of violation of non-compete agreements, unfair competition, and tortious interference with contract.
- Providing training to management, human resource professionals, and employees regarding numerous employment-related topics, including workplace discrimination and harassment, religion in the workplace, unemployment compensation, the Family and Medical Leave Act, the Americans with Disabilities Act, and the Uniformed Services Employment and Reemployment Rights Act.
- Advising clients on variety of state and federal regulatory issues.
- Serving as outside counsel to a state licensing agency.
- Represented a North Carolina mutual insurance holding company in its merger with a Minnesota mutual insurance holding company, combining two of the nation's leading providers of medical professional liability insurance in the first-ever merger by a North Carolina-domiciled mutual insurance holding company, resulting in a combined company with over $2 billion in consolidated assets.
- Advised a EU-based clinical research organization in a definitive agreement to acquire the pharmacovigilance business from a global, listed healthcare services company for approximately $10,000,000 in cash.
- Advised a contract research organization in a definitive agreement to acquire a specialized contract research organization for the biotechnology industry.
- Advised a private equity fund and its contract research solutions portfolio company in their acquisition of a statistical programming, consulting, and data management company.
- Advised a company specializing in video game and software development in a definitive agreement to acquire a company that developed a presence-based social networking platform connecting users online through live video on mobile and desktop apps.
- Advised a private equity fund in its acquisition of a leading provider of staffing resources to the biotechnology, pharmaceutical, and medical device companies for clinical trial needs.
- Advised a leading CRO in Asia on the employment law aspects of its acquisition of CRO assets in the United States.
- Advised a publicly-traded health services company on the employment law aspects of its acquisition of a health services division of a privately-held company for $105 million in cash.
- Advised an online gaming company in a definitive agreement to acquire an online 3-D modeling company.
- Advised an online gaming company in an acquisition of a UK-based pioneer in the "kidtech" market.
- Advised a leading healthcare services provider on the employment law aspects of its $60 million cash acquisition of a global sourcing company.
- Advised a private equity-backed medical device repair services company on the employment law aspects of its sale of its wholly-owned operating subsidiaries to a strategic buyer operating in the medical device repair services industry.

- Advised a publicly-traded health information technologies and clinical research company on the employment law aspects of its acquisition of a consulting business focusing on orphan drug designations.
- Advised a private equity fund on the employment law aspects of its acquisition of a specialty pharmaceutical company.
- Advised a frozen foods company on the employment law aspects of its definitive agreement to acquire a frozen snacks business.
- Represented a private equity fund in its acquisition of a leading digital patient recruitment company.
- Represented a private equity fund in its acquisition of a leading contract research organization and contract development and manufacturing organization specializing in cell and gene therapy.

CREDENTIALS

Recognition

- *Chambers USA,* Labor & Employment (2025-2026)
- *Business North Carolina* Legal Elite*,* Employment (2024)
- *Benchmark Litigation*, North Carolina Labor and Employment Star (2020-2021, 2023-2024)
- *The Best Lawyers in America*®
  - Litigation - Labor and Employment (2019-2027)
  - Employment Law - Management (2025-2027)
- Super Lawyers
  - North Carolina Super Lawyers (2026-2027)
  - North Carolina Super Lawyers Rising Star (2011, 2018)

Education

- University of North Carolina, J.D., 2003
- Campbell University, B.A., *summa cum laude*, 2000

Bar & Court Admissions

- North Carolina
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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OVERVIEW

Rose Kenyon's professional experience involves over 45 years of practice that includes all aspects of employment and labor law in a wide variety of industries. Rose has advised both private and public companies, including their senior executives and boards of directors, on significant employment law risk management matters and potential claims, government audits and investigations, serious discrimination, harassment, and misconduct investigations, corporate governance matters, executive employment agreements and compensation, and employment matters in mergers and acquisitions.

Rose is a trusted advisor to employers on their most strategic and high risk employment issues, and clients describe Rose as a "…*very talented lawyer" and "very strong and practical"* (*Chambers USA*). She is a frequent speaker on emerging employment and labor law trends and regularly conducts training for human resources professionals and managers.

Prior to joining Smith Anderson, Rose served for 13 years as in-house counsel for Carolina Power & Light Company (now known as Duke Energy), having served as Deputy General Counsel.

Rose is a past Chair of the firm's Pro Bono Committee.

Early in her career, Rose practiced with a business law firm in Richmond, Virginia.

EXPERIENCE

- Served as lead in-house employment and labor counsel to a Fortune 500 company for 13 years, during a period of rapid change that included major workforce restructurings, union organizational activity, numerous employment based lawsuits and claims (including several multiple plaintiff suits and systemic claims), multiple OFCCP audits (including corporate headquarters and glass ceiling), among other things.
- Lead employment lawyer in numerous merger and acquisition transactions in a wide range of industries that included the resolution of significant transition issues regarding the misclassifications of workers (e.g., wage and hour, independent contractor), leased employee arrangements, liability for significant paid-time-off balances, professional employer organization arrangements, non-competition agreements, executive employment agreements, and cross-border issues, among other things.

- Conducted internal investigations into misconduct, embezzlement, harassment, threats of workplace violence, and other wrongdoing, for both publicly-traded and private companies.
- Represented employers in the development of employment agreements, severance and non-competition agreements for senior level officers of both private and publicly-traded companies, and private institutions of higher education.
- Represented CEOs and senior level officers of both private and publicly-traded companies, and private institutions of higher education, in connection with their employment agreements in a wide range of industries, including the institutional health care, pharmaceutical, banking, technology and manufacturing industries, and in higher education.
- Represented national and global companies in major reorganizations and downsizings of their workforces, including the relocation of offices, in a wide-variety of industries including the pharmaceutical, hospitality, technology, utility, and manufacturing industries.
- Provided strategic and risk management advice on sensitive and high-risk employment decisions and processes, corporate governance, and the development of system-wide policies and handbooks.
- Successfully defended employers in federal and state court and before administrative agencies against whistleblower claims under federal and state laws, systemic and individual claims of race discrimination, and sensitive harassment and gender discrimination claims, employment contract claims, wage and hour claims, classification issues, and in government audits.

CREDENTIALS

Recognition

- North Carolina Bar Foundation (NCBF), Endowed Justice Fund Honoring Rosemary Gill Kenyon (2024)
- *Chambers USA,* Labor & Employment (2008-2026)
- *The Best Lawyers in America*®
    - Employment Law - Management (2016-2027)
    - Litigation - Labor and Employment (2024-2027)
- Fellow, American College of Labor and Employment Lawyers
- Fellow, American Bar Foundation
- Women of Justice Award, *North Carolina Lawyers Weekly* (2012, 2019)
- North Carolina Pro Bono Honor Society
- *Business North Carolina* Legal Elite*,* Employment (2024-2025)
- Super Lawyers
    - North Carolina Super Lawyers (2012-2025)
    - North Carolina Super Lawyers, Top 50 Women (2014)

- Academy of Women of the YWCA of the Greater Triangle, Inducted 2004
- Martindale-Hubbell AV Preeminent Rated

Clerkships

- Volunteer Clerk for the Honorable W. Earl Britt, District Court Judge for the Eastern District of North Carolina

Education

- University of Notre Dame, J.D., 1979
- Saint Mary's College (Notre Dame, IN), B.A., *magna cum laude*, 1976

Bar & Court Admissions

- North Carolina
- Michigan (inactive)
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Eastern District of Virginia
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina
- Virginia (inactive)

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OVERVIEW

James is an attorney with Smith Anderson's Workplace Law team with a focus on labor and employment matters. He regularly advises employers on compliance with state and federal employment laws, assists with internal investigations, and drafts employment and severance agreements. Outside of his consulting work, James has represented employers through claims involving allegations of discrimination, harassment, retaliation, and wage and hour violations in both federal and state court as well as before regulatory agencies (including the EEOC and NLRB).

Prior to joining Smith Anderson, James was an attorney for an international law firm, where he represented employers through all phases of litigation up to and through trial. He also gained extensive experience representing clients in mediations, arbitrations, and settlement negotiations.

James and his wife enjoy spending time with their dog Ramona, cheering on the Hurricanes, and trying out new restaurants.

EXPERIENCE

- Regularly counsel employers regarding development and implementation of compliant handbooks, policies, and practices.
- Successfully defended employers against claims involving discrimination, wrongful discharge, retaliation, harassment, wage and hour, and civil rights claims.
- Regularly counsel employers on options and strategies for handling particular hiring, termination, promotion, reassignment, and performance management scenarios.
- Represented clients in investigations and mediations conducted by the Equal Employment Opportunity Commission.
- Presented on workplace issues including compliance with executive orders impacting Diversity and Inclusion programs in the workplace.

CREDENTIALS

Education

- University of North Carolina School of Law, J.D., with honors, 2017
  - Order of Barristers
  - National Moot Court Team
- North Carolina State University, B.A., magna cum laude, 2013

Bar & Court Admissions

- District of Columbia
- North Carolina
- U.S. District Court for the District of Columbia
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Kimberly J. Korando

ATTORNEY

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"Kimberly Korando is a first-class employment lawyer and a brilliant legal mind." ***– Client quote in Chambers USA***

OVERVIEW

Kim Korando is recognized as one of North Carolina's leading employment lawyers by *Chambers USA: America's Leading Business Lawyers*, Law and Politics North Carolina *Super Lawyers*, *Best Lawyers®,* and *Business North Carolina* Legal Elite. She founded the firm's Employment, Labor, and Human Resources practice group and served as its inaugural leader.

For more than 30 years, Kim has served as a trusted advisor to public and private companies throughout the U.S. in matters of financial, reputational, and operational significance. Her work has led to *Chambers' USA* client reviews describing her as "simply outstanding on employment law," "a diligent top tier attorney," who does "a first class job" and "has a way of looking at several different sides of a situation to evaluate it clearly," and "is exceedingly bright, capable and practical, and gives current pragmatic advice."

As general outside employment and labor and human resources counsel, Kim advises public and private companies in a wide variety of industries including hospitals and healthcare, government contractors, utilities, technology, pharmaceuticals, biotechnology, hospitals and healthcare, automotive, semiconductor, paper/ cellulose and furniture manufacturers, insurance, banking, retail, hospitality, and food and beverage distribution, as well as municipalities and law firms.

Kim is retained as special counsel to conduct independent internal investigations, workplace compliance audits, and workplace culture assessments, including those arising from #Me-Too and Social Justice movements, and allegations of hostile and toxic work environments.

A thought leader who frequently speaks and writes on human resources compliance and risk management issues in the business and legal community, Kim regularly collaborates with companies developing in-house training programs and has trained thousands of supervisors, managers, and Human Resources professionals in legally compliant employment practices, as well as investigators for the U.S. Equal Employment Opportunity Commission. She serves on the Board of Editors for the nation's leading employment discrimination treatise, and authors a leading North Carolina workplace policies and forms guidebook that is updated annually through the North Carolina Chamber.

EXPERIENCE

Crossborder

- Regularly advises global companies based outside the U.S. (Japan, Germany, the Netherlands, Austria, France, the U.K., and Canada) and outside North Carolina with regard to establishing North Carolina workforces and associated compliance with U.S. and North Carolina laws.

Compensation and FLSA

- Conducted enterprise-wide compensation analyses focusing on identifying and correcting pay equity issues.
- Developed discretionary and “unlimited” paid time off programs implemented to replace accrued leave programs.
- Conducted enterprise-wide audits of worker classification and developed strategies for reclassifying misclassified workers and practical solutions for time recording practices (including donning/doffing, automatic clocking/deductions, and use of remote devices for work) for manufacturing, healthcare, hospitality, distribution, technology, and other industry employers.

Affirmative Action, Diversity Initiatives and EEO

- Developed and presented briefings for boards and other governing bodies addressing institutional leadership on these initiatives.
- Successful defense of EEOC investigations and OFCCP compliance audits focusing on allegations of class-wide race, gender, and disability discrimination in hiring, promotion, compensation, and terminations, including challenges to criminal history, testing, and other employee selection criteria.
- Successfully resolved (pre-litigation) allegations of systemic race and gender discrimination, including those made by current employees and supported by national and local civil rights groups, and allegations of harassment against executives and high ranking officials.
- Regularly establishes and annually updates affirmative action plans for defense and other federal contractors (financial, healthcare, pharmaceutical, manufacturing, consulting, distribution, hospitality) with special emphasis on risk management regarding analysis of employment activity, compensation, recruiting, and selection procedures.

Whistleblowing/Retaliation

- Strategic advice on managing whistleblowing employees.
- Successfully defended whistleblower and retaliation complaints before the U.S. Department of Labor, EEOC, and other agencies, including environmental and financial fraud complaints.

Internal Investigations

- Retained as special counsel to conduct internal investigations into allegations of harassment, discrimination, code of conduct violations, embezzlement, and root cause of management failures.

Restructuring and Organizational Changes

- Designed RIFs, lay-offs, furloughs, and recovery programs.
- Designed comprehensive workforce restructuring programs, including voluntary separation programs and employee selection and staffing processes that have been successfully defended before the U.S. Court of Appeals.

WorkHealth Initiatives and Risk Management

- Developed and integrated corporate policies for hospitals, banks, and pharmaceutical, manufacturing, and technology companies to manage leave (FMLA/STD/ADA reasonable accommodation leave/workers' compensation leave) and mandatory paid sick leave obligations. Developed fitness for duty programs including functional capacity testing for manufacturing, healthcare, and distribution worksites.
- Developed mandatory vaccine policies designed to maximize herd immunity while minimizing liability for ADA and Title VII reasonable accommodation violations and served as reviewer of exemption requests.
- Developed drug-testing programs, including random testing programs and programs in medicinal and recreational marijuana and CBD jurisdictions.
- Led interdisciplinary publicly-traded Fortune 500 corporate ADA task force charged with: identifying Title I and Title III compliance issues; reviewing and modifying corporate policies, procedures and practices including medical testing, qualification standards, and test administration accommodation.

Crisis Management

- Regularly develops and executes strategies and plans for minimizing liability in high risk terminations.
- Coordinated and managed regulatory, communication, and risk management response to high-profile workplace crises, including those arising from #Me-Too and Social Justice movements and employee and community social media postings, and industrial accidents.

Labor

- Coordinated responses to union organization campaigns and collective bargaining with USW and IBEW.

Training

- Develops customized content for training programs on establishing and maintaining respectful workplaces (including diversity, inclusion, and microaggressions), interviewing and selection, performance management, and legal aspects of managing people.
- Developed highly participatory mock trial training experience in which supervisors experience first-hand how their decisions play out in front of a jury which has been customized for employers in a wide range of industries and delivered across the country.

- Developed highly participatory mock trial training experience in which human resources professionals and internal company investigators experience first-hand how their decisions in conducting an investigation play out in front of a jury which has been customized for employers in a wide range of industries and delivered across the country.

Technology and Related Policies

- Advised technology companies developing AI-powered tools for employee selection and assessment.
- Assisted companies with development of BYOD, remote work, social media, and departing employees procedures designed to protect company reputation and assets.

Mergers and Acquisitions

- Advised an international research-oriented healthcare group on employment-related matters in its acquisition of worldwide product rights to a rare disease therapy.

CREDENTIALS

Recognition

- *Chambers USA,* Labor & Employment (2005-2026)
- *The Best Lawyers in America*®
  - Employment Law - Management (2007-2027)
  - Labor Law - Management (2007-2027)
  - "Lawyer of the Year," Raleigh, Employment Law - Management (2024 and 2026)
  - "Lawyer of the Year," Raleigh, Labor Law - Management (2013 and 2021)
- Fellow, American Bar Foundation
- *Business North Carolina* Legal Elite, Employment Law (2022)
- North Carolina Super Lawyers (2006-2027)
- Martindale-Hubbell AV Preeminent Rated since 1999
- *Oklahoma Law Review*, Note Editor

Education

- University of Oklahoma, J.D., with honors, 1986
- University of Oklahoma, B.S., in psychology, 1980

Bar & Court Admissions

- North Carolina
- Supreme Court of the United States
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Andrew Kragie

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OVERVIEW

Andrew Kragie is a member of the firm's Workplace Law and Employment Litigation teams, helping employers manage risk, respond to litigation and administrative claims under federal and state employment laws, and navigate complex issues, including workplace speech and restrictive covenants such as non-competes.

Before joining Smith Anderson, Andrew practiced employment law and business litigation at a national firm's Raleigh office. Earlier in his career, he spent six years as a journalist covering law, policy, and politics for Law360, The Atlantic, and the Houston Chronicle. Andrew draws on that experience to explain the law in plain English.

Outside of work, Andrew enjoys trying new barbecue, cheering for Duke basketball and U.S. soccer, and spending time outdoors with his wife, son, and dachshund mix.

EXPERIENCE

- Defended employers against discrimination claims in federal and state courts and before the U.S. Equal Employment Opportunity Commission (EEOC) and similar state agencies.
- Drafted, enforced, and resisted restrictive covenants covering competition, solicitation, trade secrets, and confidential information.
- Counseled and represented employers regarding workplace speech in both the public and private sectors under the First Amendment, the National Labor Relations Act (NLRA), and state laws.
- Advised employers regarding leave policies under the federal Family and Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), and state laws.
- Defended employers in wage-and-hour cases under the Fair Labor Standards Act (FLSA) and other federal and state laws.
- Investigated employee complaints and allegations concerning senior organizational leaders.
- Reviewed and revised employee handbooks for compliance with federal and state laws.

CREDENTIALS

Clerkships

- Judicial Intern, Chief Judge Donna Stroud, North Carolina Court of Appeals

Education

- University of North Carolina School of Law, J.D., with honors, 2024
  - Notes Editor, First Amendment Law Review
  - Wordsworth Fellow in Entrepreneurship (recognizing excellence in serving nonprofits through the Community Development Law Clinic)
  - N.C. Cancer Hospital Volunteer
  - President, Media Law Society
  - Christian Legal Society
- Duke University, A.B., with distinction, 2015
  - Alona E. Evans Prize in International Law
  - Melcher Family Award for Excellence in Journalism
  - University Commencement Student Speaker

Bar & Court Admissions

- North Carolina
- South Carolina
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Justin B. Lockett

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"Do what you can, with what you have, where you are." – ***Theodore Roosevelt***

OVERVIEW

Justin Lockett is an attorney with Smith Anderson's Litigation group and focuses his practice on advising clients on employment and general business litigation matters. Justin has assisted clients with contractual, business tort, and general litigation matters in state and federal courts. He has also represented clients in race, sex, age, and disability discrimination and retaliation claims in front of state and federal agencies and in state and federal courts. Justin has represented a variety of clients including automobile dealerships, hospitals, law firms, packaging companies, and software companies.

Justin's interests include chess, having served as Lead Chess Coach and Assistant Chief Tournament Director for Triangle Chess. He also currently serves as a coach in Campbell Law School's advocacy program, training students in the art of appellate advocacy and preparing them for advocacy competitions each semester.

CREDENTIALS

Education

- Campbell Law School, J.D., with honors, 2022
  - The Order of Barristers
  - Dean's Excellence Merit Scholarship
  - Chief Comments Editor, *Campbell Law Review*
- North Carolina State University, B.A., summa cum laude, 2019

Bar & Court Admissions

- North Carolina
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Caryn Coppedge McNeill

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Management Committee

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"Caryn is an expert in her space and continues to provide excellent service with very strong commercial awareness." ***– Client quote in Chambers USA***

OVERVIEW

Caryn McNeill leads Smith Anderson's Employee Benefits and Executive Compensation practice group. Caryn receives a Band 1 ranking in *Chambers USA*. Clients say she is a "*seasoned expert, incredibly knowledgeable, and intelligent*" (*Chambers USA* 2021). The firm's Employee Benefits and Executive Compensation group is also highly credentialed, having consistently received the highest ranking (metropolitan Tier 1) from *U.S. News & World Report* and *Best Lawyers*® "Best Law Firms" since 2010 and recently been ranked in Band 1 of *Chambers USA* Employee Benefits & Executive Compensation. Caryn regularly advises public and private companies on all aspects of the design, implementation, and administration of employee benefit plans and executive compensation arrangements, including stock option plans and other types of long-term incentive compensation arrangements. A significant part of her practice is devoted to counseling and negotiating on behalf of clients in connection with mergers and acquisitions.

Caryn is a Past President of the North Carolina Bar Association, a former Board Chair of Ravenscroft School, an elected member of The American Law Institute (ALI), and member of Smith Anderson's Management Committee.

EXPERIENCE

- Represented a Nasdaq-listed bank holding company with employee benefits matters related to its assumption of all customer deposits and certain other liabilities, and acquisition of substantially all loans and certain other assets, of a bridge bank, as successor to the failed bank subsidiary of a Nasdaq-listed bank holding company, from the Federal Deposit Insurance Corporation, as receiver for the bridge bank.
- Represented a North Carolina mutual insurance holding company with employee benefits matters in connection with its merger with a Minnesota mutual insurance holding company, combining two of the nation's leading providers of medical professional liability insurance in the first-ever merger by a North Carolina-domiciled mutual insurance holding company, resulting in a combined company with over $2 billion in consolidated assets.

- Represented a North Carolina bank and its parent with respect to the employee benefits aspects of an approximately $220 million merger with another bank.
- Advised a multinational Fortune 500 provider of product development and integrated healthcare services on benefits-related matters in its merger with a NYSE-listed global information and technology services company, creating a leading information and tech-enabled healthcare service provider. The equity market capitalization of the joined companies was more than $17.6 billion at closing.
- Advised a special materials company on the acquisition of a leading manufacturer of wear-resistant metallic and ceramic alloy coatings.
- Advised a special materials company on the purchase of substantially all of the assets of a leading manufacturer of value-added ferrotitanium, titanium sponge, titanium powders, and specialty forms.
- Advised a leading utilities, solar, and electrical contractor in a definitive agreement to be acquired by an independent sponsor for an undisclosed amount of cash and equity.
- Provided employee benefits advice to a global LED lighting and semiconductor manufacturing company in connection with its agreement to sell $850 million of assets to a publicly-traded German company. The parties terminated the sale before closing due to regulatory considerations.
- Represented a global provider of biopharmaceutical services in its $1.1 billion initial public offering and listing on the New York Stock Exchange, including design and preparation of new stock incentive plan and annual management incentive plan, and assistance with related disclosures.
- Served as company counsel with respect to ESOP's participation in $2.04 billion aftermarket auto parts industry merger.
- Advised a global contract research organization and drug development services company in a definitive agreement to acquire a provider of decentralized and traditional clinical trial-related services.
- Advised an online gaming company in a definitive agreement to acquire an online 3-D modeling company.
- Advised an online gaming company in an acquisition of a UK-based pioneer in the "kidtech" market.
- Advised a contract research organization in a definitive agreement to acquire a specialized contract research organization for the biotechnology industry.
- Advised a private equity fund and its contract research solutions portfolio company in their acquisition of a statistical programming, consulting, and data management company.
- Represented a pharmaceutical company being acquired by a global biopharmaceutical company and negotiated related 280G treatment and future severance protection and incentive arrangements for seller's employees.
- Advised a public biotherapeutic company about the 409A issues associated with extending the term of expiring options and the correction of same.
- Represented an institutional ESOP trustee in connection with the purchase of 100% of the stock of a chemical supplier.
- Advise multiple companies about a variety of issues associated with the administration of their qualified retirement plans, including creating investment policy statements, reviewing investment performance, and replacing investment options; analyzing fiduciary issues related to changes in employer contributions or other plan design issues due to changes in economic circumstances; and correcting operational failures arising in day-to-day plan administration.

- Advised a semiconductor and LED company on employee benefits aspects of the divestiture of its lighting products business unit for an initial cash payment of $225 million plus the potential to receive an earn-out payment based on the business's post-closing performance.
- Advised a publicly traded health services company on the employee benefits aspects of its acquisition of a health services division of a privately held company for $105 million in cash.
- Advised a 100% Employee Stock Ownership Plan-owned company providing support services to the poultry industry in an acquisition by a private equity-backed buyer for approximately $21 million in cash and equity.
- Advised a private equity fund on the employee benefits aspects of its acquisition of a specialty pharmaceutical company.
- Represented a private equity fund in its acquisition of a leading digital patient recruitment company.
- Represented a private equity fund in its acquisition of a leading contract research organization and contract development and manufacturing organization specializing in cell and gene therapy.

CREDENTIALS

Recognition

- *Chambers USA*, Employee Benefits & Executive Compensation (2021-2026)
- *The Best Lawyers in America*®
  - Employee Benefits (ERISA) Law (2010-2027)
  - "Lawyer of the Year," Raleigh, Employee Benefits (ERISA) Law (2013, 2016, 2018, 2020, 2024, 2026)
- Elected Member, The American Law Institute (ALI)
- Fellow, American Bar Foundation
- National Conference of Bar Foundations Excellence Award (2025)
- North Carolina Super Lawyers (2014-2027)
- *North Carolina Lawyers Weekly*
  - Class of 2024 Icons & Phenoms
  - "Women of Justice" Award Recipient (2019)
  - "Leaders in the Law" Honoree (2017)
- Martindale-Hubbell AV Preeminent Rated
- Triangle Business Leader Media's Pro Bono Impact Award

Education

- Duke University, J.D., 1991
- Davidson College, B.A., with honors in English, 1988
- Holton-Arms School, 1984

Bar & Court Admissions

- North Carolina

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Stephen T. Parascandola

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"Stephen's super-responsive; he's good about managing his clients and checking if I need more information or assistance." ***– Client quote in Chambers USA***

OVERVIEW

Steve Parascandola is recognized as one of North Carolina's leading environmental, health, and safety lawyers by *Chambers USA: America's Leading Business Lawyers*, *The Best Lawyers in America©,* Marquis' *Who's Who in American Law*, *Business North Carolina's* Legal Elite, and North Carolina *Super Lawyers*. He leads Smith Anderson's Governmental Affairs, Administrative, and Regulatory Law team, including the Environmental and OSHA practice groups.

Steve began his career as an environmental, health, and safety attorney in the New York City office of a prominent regional law firm. Prior to joining Smith Anderson in 1996, he also spent almost four years as Senior Enforcement Counsel for the North Carolina Department of Justice. Among other things, Steve served as co-counsel in the first Superfund cost recovery action ever brought by the State of North Carolina and helped to implement the state Brownfields Program. He has also served as lead defense counsel in one of the largest OSHA enforcement actions brought to date in North Carolina.

He regularly counsels clients on risk management, particularly with respect to mergers and acquisitions, due diligence, insurance matters, investigations and audits, and public company environmental disclosures. He also has extensive experience representing clients before regulatory agencies and has handled a broad range of complex transactions for the purchase, sale, leasing, construction, and development of commercial, industrial, and public utility properties.

Within the firm, Steve has held various leadership positions, most recently serving as a member of the firm’s Partnership Admission and Compensation Committees.

View Less

EXPERIENCE

- Advised a special materials company on the purchase of substantially all of the assets of a leading manufacturer of value-added ferrotitanium, titanium sponge, titanium powders, and specialty forms.
- Advised an investment company in a definitive agreement to purchase the outstanding equity interests of the largest independent blender and packager of lubricants to the automotive, agriculture, commercial, and heavy duty markets in North America.
- Served as local environmental counsel for Fortune 100 company that owns and operates large scale waste-to-energy facilities.
- Represented a major convenience store chain for over 20 years in connection with acquisitions, enforcement defense, environmental permitting, and private party settlements throughout 14 states.
- Represented a leading North Carolina developer in connection with contaminated property redevelopments throughout North Carolina.
- Represented a global developer and manufacturer of pharmaceuticals, biopharmaceuticals, and agrochemicals in connection with defense of one of the single largest OSHA enforcement actions ever brought by the N.C. Department of Labor.
- Represented an international privately-held soft drink manufacturer, seller, and distributing company in connection with its acquisitions and environmental and OSHA compliance at facilities across the United States.
- Represented one of North Carolina’s largest community banks in connection with financing of Brownfields Program projects throughout North Carolina.
- Advised a semiconductor and LED company on the environmental aspects of the divestiture of its lighting products business unit for an initial cash payment of $225 million plus the potential to receive an earn-out payment based on the business’s post-closing performance.
- Assisted the largest electric utility in the United States for over 16 years with acquisitions, dispositions, and regulatory compliance regarding the utility's power plant properties, lakes, substations, transmission, and distribution projects across North and South Carolina.
- Represented a national paper product company in connection with its environmental permitting and OSHA compliance at several North Carolina facilities.
- Represented a major convenience store chain with environmental insurance coverage disputes throughout the Southeast.
- Represented the largest electric utility in the United States who is a performing party in a CERCLA removal action at the largest Superfund Site in North Carolina and also in related contribution litigation brought against over 150 parties.
- Represented the nation's third-largest poultry producer in OSHA enforcement defense, managing OSHA inspections, and with responses to employee complaints made to NCDOL's OSH Division.
- Represented one of the nation's largest convenience store chains with the acquisition of 47 stores and 6 ethanol distribution facilities in Kansas and Missouri.
- Assisted a global developer and manufacturer of pharmaceuticals, biopharmaceuticals, and agrochemicals with OSHA compliance, document requests, and inspections by NCDOL's OSH Division.

- Represented various clients to defend against and avoid to third-party claims for property damage and personal injury related to off-site contamination from underground storage tanks and general facility operations.

CREDENTIALS

Recognition

- *Chambers USA,* Environmental (2013-2026)
- *The Best Lawyers in America*®, Environmental Law (2007-2027)
- *Business North Carolina* "Legal Elite," Environmental
- Martindale-Hubbell AV Preeminent Rated
- North Carolina Super Lawyers (2010-2013, 2016-2021)
- Marquis *Who's Who in American Law*
- Fluent in Italian and Spanish; conversational and written Portuguese

Education

- Stetson University, J.D., 1988
  - *Law Review*
- Eckerd College, B.A. 1984
- Universidad Complutense de Madrid, 1982-1983

Bar & Court Admissions

- Florida
- New York
- North Carolina

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OVERVIEW

Susan Parrott has extensive experience in identifying and managing employment-related issues in mergers, acquisitions, and reorganizations. She is frequently called upon to develop and interpret employment, non-competition, confidentiality, and severance agreements. In addition, she routinely advises clients on wage and hour matters and assists in conducting internal compliance audits and responding to Department of Labor investigations.

EXPERIENCE

- Served as lead employment lawyer in the representation of a publicly traded specialty pharmaceutical company in its acquisition of a privately-traded specialty pharmaceutical company.
- Served as lead employment lawyer for numerous acquisitions by a multi-state, publicly traded convenience store operator.
- Prepared executive employment agreement for the president and chief executive officer of a publicly traded bank holding company.
- Responsible for executive employment agreements required for the succession of the chief executive officer of a publicly traded, global manufacturer of consumable products.
- Successfully defended U.S. Department of Labor investigations of wage and hour exemption classification in various industries including banking, software, retail distributing, restaurant, civil engineering, and pharmaceutical manufacturing.
- Successfully defended North Carolina Department of Labor investigation of wage payment practices for retail distributing company.
- Conducted internal audits of wage and hour and wage payment matters for clients in various industries, including banking, pharmaceutical manufacturing and sales, retail, and internet/technology.
- Advised a multinational Fortune 500 provider of product development and integrated healthcare services on employment-related matters in its merger with a NYSE-listed global information and technology services company, creating a leading information and tech-enabled healthcare service provider. The equity market capitalization of the joined companies was more than $17.6 billion at closing.
- Advised a private equity fund on employment-related matters in connection with its acquisition, equity, and debt financing of a reference laboratory.

- Advised a leading contract research organization on the employment law aspects of a definitive agreement to acquire a provider of contract research, clinical and regulatory, and other consulting services.
- Advised a leading healthcare services provider on employment-related matters in connection with its $60 million cash acquisition of a global sourcing company.
- Advised a leading provider of pharmacy-based patient care solutions and medication synchronization services to independent and chain pharmacies on employment-related matters in its approximately $41 million sale of the company to a publicly traded buyer.
- Advised a French multinational industrial and steel distributor on employment-related matters in connection with its acquisition of a controlling interest in a Virginia-based steel service center.
- Advised a frozen foods company on employment-related matters in connection with a definitive agreement to acquire a frozen snacks business.
- Appellate advocacy practice has included representation of clients before the North Carolina appellate courts, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States.

CREDENTIALS

Recognition

- *The Best Lawyers in America®,* Employment Law - Management (2025-2026)
- Fellow, American Bar Foundation
- Martindale-Hubbell AV Preeminent Rated

Education

- University of North Carolina and Vermont Law School, J.D., with honors, 1981
- University of North Carolina, M.P.H., 1978
- Duke University, B.A., with honors 1974

Bar & Court Admissions

- North Carolina
- Supreme Court of the United States
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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David A. Pasley

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OVERVIEW

David Pasley is a business litigation attorney who counsels and advocates for clients in a variety of business disputes, including breach of contract issues, trademark disputes, unfair trade practices, and other business-related claims. He also has experience with employment litigation and has counseled and represented employers in cases involving claims of discrimination, retaliation, harassment, wrongful termination, and other employment-related issues.

David joined Smith Anderson in 2018 after graduating with high honors from the University of North Carolina School of Law in 2017 and clerking for Judge Thomas Schroeder of the United States District Court for the Middle District of North Carolina. Prior to law school, David taught Eighth Grade English for two years in Orangeburg, South Carolina. David was born and raised in Raleigh and is excited to be part of the growing and thriving professional community here.

EXPERIENCE

- Represented a company in successfully protecting and enforcing intellectual property rights.
- Represented multiple corporations in defending claims of false advertising.
- Represented owner of commercial real estate in action brought to enforce property rights.
- Represented a private individual in dispute with the United States involving tax refund.
- Represented a company in defending claim arising out of breach of contract claim involving medical devices.
- Represented various employers in defending against sex, gender, and disability discrimination claims, as well as claims of wrongful termination and/or retaliation.
- Represented an electric aerospace company in dispute with prototype airframe supplier that claimed exclusive rights to participate in aircraft development and manufacturing program and sought hundreds of millions of dollars in damages. We filed counterclaims, obtained a temporary restraining order requiring return of our client's intellectual property, and obtained a declaratory judgment establishing that our client properly terminated the underlying contract and the supplier had no further right to participate in the program. The matter was ultimately resolved without any payment by our client.

CREDENTIALS

Recognition

- *Best Lawyers: Ones to Watch® in America,* Commercial Litigation (2023-2027)
- Articles Editor, *North Carolina Law Review,* 2017
- 2015 Gressman-Pollitt Award for Best Overall Oral Advocacy

Clerkships

- Honorable Thomas D. Schroeder, United States District Court for the Middle District of North Carolina

Education

- University of North Carolina School of Law, J.D., *with high honors*, 2017
  - Order of the Coif
- University of North Carolina, B.A., Philosophy*, with distinction*, 2012

Bar & Court Admissions

- North Carolina
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Edward F. Roche

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"Ed is responsive, with great thought leadership. Great analytical skills. Frequently wins." – ***Client quote from BTI Consulting Group***

OVERVIEW

Ed Roche helps businesses navigate a wide range of challenging disputes. He is an adept copyright and trademark lawyer. Representing both copyright and trademark holders and those accused of infringement, he has successfully resolved dozens of intellectual property disputes for clients both in the early stages and deep into lengthy litigations. Ed also handles complex trade secret and non-compete cases, many of which intersect with intellectual property law and draw on his copyright and trademark experience. Ed's practice also includes a large volume of cases involving claims for breach of contract, unfair trade practices, breach of fiduciary duty, and violations of securities laws.

Ed prioritizes every client's business interests in every dispute. He works with clients to optimize their positions and evaluate their litigation risks. Ed is comfortable taking cases to trial when necessary but frequently finds creative business solutions that serve a client's overall business goals.

Before joining Smith Anderson, Ed was an attorney in the Washington, D.C. office of a global law firm and clerked for a federal appeals court judge.

As the Vice President of the Triangle Chapter of the British-American Business Council, he helps British businesses navigate the American market and cultivates business and cultural connections between his native United Kingdom and his adopted home of North Carolina.

Ed cherishes time with his wife and two young children. He is a fan of college basketball, Premier League soccer, and live music.

EXPERIENCE

Copyright and Trademark

- Defended against copyright and trademark claims, and pursued IP counterclaims, on behalf of a major national auto products retailer and an auto goods manufacturer.
- Defended a construction company in a copyright dispute, prevailing after a two-day arbitration.
- Helped online retailers secure takedowns of websites infringing retailer's intellectual property rights.
- Represented various clients in trademark proceedings at the Trademark Trial and Appeal Board ("TTAB").

Non-Compete and Trade Secret Litigation

- Represented digital marketing company pursuing claims against former employees for theft of software code for a proprietary marketing tool.
- Defended global technology company against competitor's claims of trade secret misappropriation and interference with contract.
- Represented various employers in enforcing employee non-compete provisions.

Other Business Litigation

- Defended against two successive motions for preliminary injunctions in a multimillion-dollar case between software competitors.
- Represented a bank in emergency proceedings to prevent harm to customers due to technology vendor's actions.
- Defended a government contractor against a whistleblower complaint, involving administrative proceedings in the Department of State and an appeal to a federal appeals court.
- Helped litigate and resolve disputes between CROs, sponsors, and sites concerning clinical trial obligations and charges.
- Represented CRO in responding to subpoena in multi-district litigation alleging medical device defects.
- Defended directors against shareholder derivative actions alleging securities violations, breaches of fiduciary duties, and various related claims in state and federal courts.
- Represented mutual fund advisors against claims of excessive fees.
- Advised a university on potential antitrust dispute concerning the competitive opportunities open to the university's athletic program.
- Represented multinational technology companies responding to regulators' allegations of antitrust violations.
- Provided advice on First Amendment arguments for a news website to raise in appealing trial verdicts obtained by a public figure based on the website's news report.
- Represented a major pharmaceutical company in an investigation launched in response to a federal government subpoena seeking information on compliance with Anti-Kickback Statute.
- Served as counsel to the American Bar Association and individual plaintiffs in a lawsuit against the Department of Education, challenging the department's conduct in relation to the Public Interest Loan

Forgiveness Program.

- Wrote briefs and delivered arguments to the U.S. Court of Appeals for the Sixth Circuit on behalf of a federal habeas petitioner.
- Represented a voting rights organization litigating constitutional and statutory civil rights claims in federal court to stop a state preventing access to public voter registration records.
- Coordinated nationwide litigation efforts to assist detained immigrants.
- Defended an insurance company in pre-litigation contract dispute concerning the implementation of a software platform and amounts allegedly due under the underlying contract. Reached a favorable settlement that avoided tens of millions in payments sought from the other side and allowed the parties to continue a business relationship.

CREDENTIALS

Recognition

- *The Best Lawyers in America®*
  - Commercial Litigation (2027)
  - Litigation - Labor and Employment (2026-2027)
- *Best Lawyers: Ones to Watch® in America*
  - Commercial Litigation (2022-2025)
  - Litigation – Intellectual Property (2022-2025)
  - Litigation – Labor and Employment (2024-2025)
- Super Lawyers
  - North Carolina Super Lawyers (2027)
  - North Carolina Super Lawyers Rising Star (2022-2026)
- *BTI Consulting Group,* Client Service All-Stars (2025)

Clerkships

- Law Clerk to The Honorable Julia S. Gibbons, U.S. Court of Appeals for the Sixth Circuit

Education

- University of North Carolina, J.D., *with high honors*, 2014
  - *Order of the Coif*
  - Editor in Chief, *North Carolina Law Review*
- University of Oxford, Worcester College, B.A., Law, 2007

Bar & Court Admissions

- District of Columbia
- Massachusetts
- North Carolina
- Supreme Court of the United States
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the District of Columbia
- U.S. District Court for the District of Massachusetts
- U.S. District Court for the Southern District of Illinois
- U.S. District Court for the Western District of Tennessee
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Shameka C. Rolla

ATTORNEY

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919.821.6652

OVERVIEW

Originally from Eastern North Carolina, Shameka attended Duke University and Wake Forest University School of Law before joining Smith Anderson's Business Litigation and Workplace Law practice groups.

Her practice focuses on a wide range of business disputes, including contract, intellectual property, non-compete and trade secrets, and business tort claims, as well as employment disputes, in which she defends employers against claims involving discrimination, wrongful discharge, retaliation, harassment, and civil rights claims. As a result of witnessing her parents' experiences running their own small business, Shameka approaches her client's business and employment disputes with compassion, a desire to understand her client's business and goals, and a focus on efficiency, minimal business disruption, and conflict resolution.

She enjoys live sporting events, attending Pilates and Barre classes, walks with her dog, and Duke University basketball – Shameka served as a "line monitor" for student attendance at men's basketball games while attending Duke University.

EXPERIENCE

- Defend employers against employment claims, including, without limitation, claims of discrimination, wrongful discharge, and retaliation, and wage and hour claims.
- Conduct internal investigations for employers regarding allegations of workplace misconduct, including, without limitation, claims of discrimination, harassment, and retaliation.
- Represented a software company in federal district court in defending against breach of contract claim involving resale of software and related services and pursued numerous counterclaims; successfully obtained orders denying plaintiff's requests for TRO and preliminary injunction; case dismissed upon reaching a settlement.
- Successfully obtained a pre-trial dismissal of claims of intentional infliction of emotional distress and negligent supervision and retention against corporate clients.
- Successfully obtained a contested default judgment after oral argument in state court on behalf of client.
- Represented an individual against claims of breach of non-competition agreement, misappropriation of trade secrets, unfair competition, and unjust enrichment; successfully defended against motion for TRO; case dismissed upon reaching a settlement.

- Assist clients in responding to third-party subpoenas.
- Defended a global technology company against competitor's claims of trade secret misappropriation and interference with contract.
- Represented claimant client in multi-million-dollar arbitration involving breach of contract claim resulting in award of full damages with pre- and post-judgment interest and attorneys' fees and costs for client.

CREDENTIALS

Recognition

- *North Carolina Lawyers Weekly* NC Excellence in Law Phenoms List (2025)

Education

- Wake Forest University School of Law, J.D., 2020
  - The Order of Barristers
  - Appellate Advocacy Clinic
  - National Trial Team
  - Moot Court Board
  - *Wake Forest Journal of Law and Policy*
- Duke University, B.A., 2017
  - Phi Alpha Theta History Honor Society

Bar & Court Admissions

- All North Carolina State Courts
- North Carolina
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

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Amelia L. Serrat

ATTORNEY

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OVERVIEW

Amelia Serrat concentrates her practice in the areas of business litigation and products liability. She has experience litigating claims for breach of contract, unfair trade practices, fraud, breach of fiduciary duty, and other business-related claims. In addition, she defends manufacturers, distributors, and insurers of consumer, automotive, and industrial products.

While attending law school, Amelia completed an internship with Chief Judge Solomon Oliver, Jr. of the Northern District of Ohio.

EXPERIENCE

- Represented a closely-held company and its majority members in a conversion, breach of fiduciary duty, tortious interference, and unfair trade practices lawsuit before the North Carolina Business Court. Obtained a temporary restraining order and favorable settlement following expedited mediation.
- Defended former director of insolvent corporation against claims for breach of contract, fraud, and unjust enrichment brought by corporation's supplier, who also attempted to pierce the corporate veil to hold director individually liable for claims against corporate entities. Obtained pre-discovery dismissal of all claims in federal court, which was affirmed on appeal by the United States Court of Appeals for the Fourth Circuit.
- Represented an internet marketing company in bringing trade secret and breach of contract claims against a public company for misappropriating trade secrets and misusing confidential information obtained during due diligence for a potential business transaction. Obtained preliminary and permanent injunctions barring the defendant from using our client's confidential information or engaging in wrongful competition.
- Represented a venture capital firm and two of its principals in a defamation action against a once-anonymous individual.
- Defended a major automotive distributor in a warranty and consumer protection lawsuit. Obtained summary judgment in trial court and dismissal of appeal by the North Carolina Court of Appeals.
- Defends national manufacturers and retailers of asbestos-containing products in toxic tort lawsuits brought in North Carolina and South Carolina.

- Defends global component manufacturer of an agent used to extinguish certain fires in multidistrict litigation involving claims for alleged personal injuries, property damage, and environmental contamination.
- Provides strategic risk management advice and negotiates settlements of pre-litigation disputes in a broad range of matters including disputes involving complex contracts, software license agreements, consumer warranties, and non-compete and trade secret issues.
- Represents commercial landlords and management companies in enforcement of property rights.
- Assists clients in responding to government and third-party subpoenas and public records requests.

CREDENTIALS

Recognition

- *Best Lawyers: Ones to Watch® in America*
  - Commercial Litigation (2022-2027)
  - Real Estate Law (2027)

Education

- University of North Carolina School of Law, J.D., *with honors*, 2015
- University of North Carolina, B.A., English and Women's Studies, 2012
  - Buckley Public Service Scholar

Bar & Court Admissions

- North Carolina
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Eastern, Middle and Western Districts of North Carolina

Academic Appointments

- Symposium Editor, *North Carolina Journal of Law and Technology*
- Pro Bono Coordinator, Domestic Violence Action Project

- Vice President, Women in Law
- Honor Court Member, Undergraduate Honor System

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Kerry A. Shad

ATTORNEY

Management Committee | Co-Chair, D&I Committee

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"Kerry is exceptional. She is direct and clear in communications, understands our business, people and strategy, and balances being assertive with innovative solutions." ***– Client quote in Chambers USA***

OVERVIEW

Kerry's practice focuses on representing employers in all types of employment related litigation. She regularly defends employers against EEOC charges and lawsuits in federal and state courts involving alleged discrimination, harassment, and retaliation. Kerry advises companies of all sizes, including global companies, on a wide variety of employment law issues across a range of industries, including healthcare (insurers and hospitals), pharmaceutical and CRO, technology, biotech, agtech, retail, hospitality, and manufacturing.

Kerry's practice also focuses on United States Department of Labor wage and hour investigations and related disputes. Kerry was part of the defense team that successfully represented GlaxoSmithKline in a case that went to the Supreme Court where the issue was whether pharmaceutical sales representatives are exempt as outside sales people under the FLSA.

Kerry has been recognized as a leading employment lawyer by *Chambers USA*, *Benchmark Litigation, Best Lawyers,* and *Super Lawyers*. She is a graduate of Florida State University and received her law degree from UNC Chapel Hill.

Kerry holds key leadership roles in the firm, including as an elected member of the Management Committee and Co-Chair of the Diversity & Inclusion Committee.

EXPERIENCE

- Successfully represented leading employers before the United States Equal Employment Opportunity Commission and state and local fair employment practices commissions across the country in connection with investigations of single claimant and class allegations.
- Retained as lead counsel for global pharmaceutical company to defend claims filed in arbitration under the company's ADR program.

- Represented hospital in two lawsuits filed in federal court in North Carolina alleging discrimination in violation of the ADA (secured dismissal under Rule 12(c)) and national origin discrimination and retaliation in violation of Title VII (stipulation of dismissal with prejudice with no payment after successful deposition of Plaintiff).
- Conducted in depth analysis for acquiring companies to determine whether target companies had properly classified employees as exempt under the FLSA, determined financial risk of misclassifications to support indemnity provision, and recommended changes to classifications to avoid future liability.
- Represented global pharmaceutical company in series of class and collective actions filed in Arizona, California, Florida and New York alleging that the company's failure to pay its pharmaceutical sales representatives overtime for hours worked in excess of 40 per week violated the FLSA and state law. The Supreme Court ultimately affirmed the entry of summary judgment for the company.
- Retained as special counsel by employers in a variety of industries to conduct internal corporate investigations into allegations of:
    - harassment, discrimination, and employee misconduct, including allegations of pattern and practice sexual harassment and racial discrimination
    - retaliation against "whistleblowers"
    - misconduct by high-ranking company officials
- Successfully defended wage and hour audits and complaint investigations conducted by the federal and state departments of labor involving donning/doffing in manufacturing plants, overtime, and misclassification issues (in a variety of industries) with exposure well in excess of $1 million.
- Represented publicly-traded company in action brought under the anti-retaliation provisions of the Sarbanes-Oxley Act ("SOX") by former Internal Auditor who asserted his termination was in retaliation for having reported accounting and reporting irregularities to the company.
- Represented convenience store chain in action filed in federal court in North Carolina by a member of the Sikh religion alleging religious and national origin discrimination in application of dress and grooming standards to screen out applicants.
- Represented global pharmaceutical company in action filed in federal court in Tennessee and the Sixth Circuit Court of Appeals by former manufacturing plant employee alleging race and gender discrimination and harassment and retaliation.
- Represented global pharmaceutical company in federal court action alleging race discrimination by employee in research and development.
- Represented employers to secure (and to defend against) TROs and preliminary/permanent injunctions to enforce confidentiality, non-solicitation, and non-competition agreements against former employees, and protect employers' trade secrets in many industries, including technology, logistics/transportation, health care (physicians/physical therapists), insurance (agents/brokers), construction, and contract research organizations.
- Represented medical group in action filed by former physician-employee alleging that miscalculations of compensation due under an employment contract violated the NCWHA.
- Retained by employers after EEOC issued cause findings for representation during the conciliation process and risk management of potential liability exposure.

- Served as "in-house" employment litigation counsel to large company managing employment litigation in jurisdictions across the country.
- Represented clients in arbitrations arising out of business sales and alleged violations of non-competition agreements.
- Developed highly participatory and mock trial training exercise for HR professionals and investigators for large global pharmaceutical company in which they experienced first-hand how their decisions and actions play out in front of a jury. The program was customized to client's policy and workforce.

CREDENTIALS

Recognition

- *Chambers USA,* Labor & Employment (2012-2026)
- *Business North Carolina* Legal Elite, Employment (2008, 2014-2015, 2022, 2024-2025)
- *Benchmark Litigation*
  - Top 50 Labor & Employment Litigators (2024-2026)
  - North Carolina Litigation Star (2023-2026)
  - North Carolina Labor and Employment Star (2018-2024)
  - Top 250 Women in Litigation (2021-2025)
- *The Best Lawyers in America*®
    - Employment Law - Management (2009-2027)
    - Litigation - Labor and Employment (2009-2027)
    - "Lawyer of the Year," Raleigh, Litigation - Labor and Employment (2026)
    - "Lawyer of the Year," Raleigh, Employment Law - Management (2022)
- Super Lawyers
  - North Carolina Super Lawyers (2012-2027)
  - Top 50: Women North Carolina Super Lawyers (2024)
- *North Carolina Lawyers Weekly*, Power List, Employment Law (2021, 2023-2025)
- *Triangle Business Journal*'s "Women in Business Award" (2015)
- Martindale-Hubbell AV Preeminent Rated

Education

- University of North Carolina, J.D., with honors, 1991
  - Editorial Board, *North Carolina Law Review*
  - Order of the Coif
- Florida State University, B.S., 1985

Bar & Court Admissions

- North Carolina

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Bella Thoren

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OVERVIEW

Bella Thoren helps employers on a wide range of employment matters, including employee relations, workplace policies, compliance, and employment-related aspects of mergers and acquisitions. As a member of Smith Anderson's Workplace Law team, her focus is helping organizations address workplace concerns, assess their legal obligations, and make informed decisions about their workforce.

Before joining Smith Anderson, Bella practiced at a Charlotte-based law firm where she advised multi-state employers on day-to-day workplace matters and policies, as well as compliance with federal, state, and local employment laws. Her experience on the M&A side includes employment-related due diligence, workforce integration planning, and navigating WARN Act and other multistate compliance considerations. She also helps employers develop policies and handbooks, prepare and review restrictive covenants, and conduct investigations into allegations of discrimination, harassment, and misconduct. In addition, Bella represents employers in administrative charges and investigations before the EEOC, OSHA, and state agencies, as well as in wage and hour proceedings, including preparing position statements and defending administrative hearings.

While at that firm, Bella also completed a secondment with the Healthcare Sector Employment Team for the nation's largest foodservice and facilities services company, where she worked directly with human resources professionals and business leaders across a national organization, advised on employee relations and litigation strategy, managed outside counsel handling disputes nationwide, and helped assess risk and pursue business-oriented resolutions.

Outside the office, Bella enjoys traveling, cheering on the Alabama Crimson Tide, and exploring new restaurants with her husband, Cooper, and their dog, Meredith.

CREDENTIALS

Recognition

- North Carolina Super Lawyers Rising Star (2026-2027)
- University of Alabama, 18 Under 31 Young Alumni Award Recipient, Class of 2026

Clerkships

- Summer Law Clerk to the Honorable L. Scott Coogler, U.S. District Court for the Northern District of Alabama
- Summer Law Clerk at the Alabama Supreme Court

Education

- The University of Alabama School of Law, J.D., 2022
  - President, Sports and Entertainment Law Society
  - Treasurer, Dorbin Women's Law Society
  - Senior Editor, Law & Psychology Review
  - Legal Research Assistant, Professor Shahar J. Dillbary (2020-2021)
  - Best Paper, Employment Discrimination Law
- The University of Alabama, B.A., summa cum laude, 2019

Bar & Court Admissions

- North Carolina
- U.S. District Court for the Western District of North Carolina

Risk Management Masterclass: How to Mitigate the Risk Around Retaliation Claims

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Risk Management Masterclass:

How to Mitigate the Risk Around Retaliation Claims

Kerry A. Shad
Shameka C. Rolla
Dani D. Dobosz

October 28, 2026

Retaliation Claim Framework

1 Protected activity

Did the employee complain, participate in an investigation, request leave or accommodation, or support another employee?

2 Employer knowledge

Who knew about the protected activity—and when?

3 Adverse employment action

What employment decision or treatment followed?

4 Causal connection

Do timing, inconsistent treatment, shifting explanations, or documentation suggest a link?

Recognizing Protected Activity

- Complaints
  - Internal complaint to HR or management
  - External complaint to a government agency
  - Lawsuit against the employer
- Participation
  - Participation in an internal or external investigation
- Requests
  - Accommodation under a statute
  - Leave requested or taken under a statute
  - Workers' compensation claim
- Support for Others
  - Complaining on another employee's behalf
  - Support for another employee's complaint

Moore v. Coca-Cola Bottling Company (6th Cir. 2024)

- Race discrimination and retaliation
- Plaintiff discharged for violating employer's drug and alcohol policy
- Plaintiff had filed grievances against the employer alleging race discrimination, including one six days before his termination
- No direct evidence of race discrimination
- Plaintiff argued that he was singled out for drug testing and the drug and alcohol policy was applied differently to white employees

Moore v. Coca-Cola Bottling Company (6th Cir. 2024)

- Sixth Circuit reversed the trial court's grant of summary judgment for the employer
- Takeaways:
  - Close time between protected activity and adverse action is suspect
  - Failure to apply employment policies as written suggests pretext
  - It is always problematic to apply the policy inconsistently to different employees

McIver v. Bridgestone Americas, Inc. (4th Cir. 2022)

- Hostile work environment and retaliation
- In 2013, Plaintiff first complained that someone was tampering with her machine
- In 2017, Plaintiff complained about a negative performance evaluation and suggested she viewed the machine tampering as related to racially charged events dating back to 2006
- In 2018, Plaintiff again complained that someone was tampering with her machine but did not mention race
- That same year, she was transferred to another department

McIver v. Bridgestone Americas, Inc. (4th Cir. 2022)

- Fourth Circuit affirmed summary judgment for the employer
- The complained of racial harassment was not committed by supervisors and was too remote in time to support claim
- Found that 2018 complaints about tampering with her machine were not protected activity under Title VII because they were not linked to any racial motivation
- Takeaway:
  - Not all complaints are protected activity

Wallace v. Performance Contractors (5th Cir. 2023)

- Discrimination, harassment, retaliation
- Plaintiff was a construction worker
- Plaintiff complained about sex-based comments from co-workers and that she was not permitted to work at elevation because no safety harnesses fit women
- Employer terminated her employment because Plaintiff violated attendance policy
- Trial court had granted summary judgment for employer on all claims

Wallace v. Performance Contractors (5th Cir. 2023)

- Fifth Circuit reversed summary judgment on all claims
- Found that complaints classified as "general gripes" were protected activity
- Employer did not apply attendance policy equally to men and women
- Takeaways:
  - Ensure equal application of all employment policies
  - No "magic words" are required for protected activity

Noonan v. Consolidated Shoe Company, Inc. (4th Cir. 2023)

- Sex discrimination in pay and retaliation
- Plaintiff asked about a male coworker being paid more than she and her supervisor told her it was a "fireable offense" to know someone else's pay
- HR stepped in, supervisor apologized, and CEO ordered an investigation into pay practices
- Plaintiff argued she was retaliated against based on her supervisor's statement, her responsibilities changing, and the company refusing to give her a recommendation letter

Noonan v. Consolidated Shoe Company, Inc. (4th Cir. 2023)

- Fourth Circuit affirmed summary judgment for the employer
- Court held "fireable offense" comment was not materially adverse where supervisor apologized, HR supported the employee, and the company investigated her concerns instead of acting on the comment
- Takeaway:
  - Prompt, good-faith response can neutralize a supervisor's misstep

Hairston v. Wormuth (8th Cir. 2021)

- Hostile work environment and retaliation
- Plaintiff had complained to EEO office about sexual harassment and perception she was being retaliated against for complaining of sexual harassment
- Her employment was terminated 10 days later
- Employer's reasons were detailed in lengthy memorandum
- 8th Cir. affirmed summary judgment for employer on hostile work environment claim

Hairston v. Wormuth (8th Cir. 2021)

- 8th Cir. reversed summary judgment for employer on retaliation claim
- Found issue of fact because employer waited 8 months to discharge Plaintiff since knowledge of misconduct
- Notably, decision was 10 days after EEO complaint
- Employer ultimately prevailed at trial, but was required to incur substantial expense
- Takeaways:
  - Can win on the underlying claim and still lose the retaliation claim
  - Waiting too long to terminate creates risk if employee later engages in protected activity
  - Courts suspicious of terminations citing pre-protected activity events as the reason for termination

Roberts v. Glenn Industrial Group, Inc. (4th Cir. 2021)

- Sexual harassment and retaliation
- Plaintiff complained about sexual harassment by his supervisor to: (i) second-level supervisor; (ii) another supervisor; and (iii) HR manager
- Plaintiff, a diver's assistant for underwater inspection and repair services to utility companies, was discharged by the company's CEO after two safety incidents
- Plaintiff argued that the CEO had constructive knowledge of his complaints

Roberts v. Glenn Industrial Group, Inc. (4th Cir. 2021)

- 4th Circuit affirmed summary judgment for employer on the retaliation claim
- Held that, to show causation, the plaintiff must prove the decisionmaker had actual knowledge of the protected activity
- Also held a 3-month gap, without evidence of a causal link, did not support an inference of retaliation.
- Takeaway:
  - It is important only to share information about protected activity with decisionmakers if it is necessary for them to know

Miller v. Chicago Transit Authority (7th Cir. 2021)

- Race discrimination and retaliation
- Plaintiff 1 was a general manager for bus maintenance
- Plaintiff 2 was a mechanical officer for bus maintenance
- Plaintiffs discharged after months of bus cooling problems that drew the attention of the company's president
- Plaintiffs argued they were discharged for filing EEO complaints about the vice president of vehicle maintenance shortly before their discharges.

Miller v. Chicago Transit Authority (7th Cir. 2021)

- Seventh Circuit affirmed summary judgment for employer
- Found one plaintiff's complaint that he felt "targeted" and treated unfairly was not protected activity when he never attributed the treatment to race
- Found there was no evidence that the decisionmaker knew of the complaints when plaintiffs had not told anyone and EEO officer had not told him until a month after discharges
- Takeaway:
  - Timing alone can't establish causation if the decisionmaker does not know about the protected activity

Gray v. State Farm (6th Cir. 2025)

- Retaliation
- Plaintiff helped a co-worker seek accommodations for a disability
- After doing so, the manager investigated the Plaintiff for time theft
- Plaintiff's employment terminated for time theft

Gray v. State Farm (6th Cir. 2025)

- Sixth Cir. reversed grant of summary judgment for employer
- Noted the investigation into time theft began immediately after protected activity
- No evidence other employees were investigated as well
- Found plaintiff plausibly alleged "cat's paw" claim
- Temporal proximity between protected activity and adverse action suggested pretext
- Takeaway:
  - Policy violation alone insufficient – watch for timing and equal treatment

Sadare v. Bosch Auto. (D. Minn. 2022)

- Disability discrimination, failure-to-accommodate, and retaliation
- Plaintiff placed on PIP for lack of reliability and accuracy
- In PIP meeting, disclosed his disability for the first time
- Employee sent demand letter from attorney
- HR asked for more information as demand letter did not request accommodation or disclose disability
- Plaintiff's employment terminated for failure to engage in PIP process and poor performance

Sadare v. Bosch Auto. (D. Minn. 2022)

- District court denied summary judgment for employer
- Found attorney demand letter was protected activity
- The Court explained:
  - "Bosch is not insulated from liability because it documented Sadare's prior performance problems. When an employer has known about its stated reason for taking adverse action against an employee for an extended period of time, but only acts after the employee engages in protected activity, the employer's earlier inaction supports an inference of pretext."

Jury Verdicts

- *Billesdon v. Wells Fargo Securities* - W.D.N.C.
  - Verdict: $4,225,558 back pay, $14M front pay
  - Affirmed by Fourth Circuit (2026)
- *Boyle v. Wayfair* – Mass. (2026)
  - Verdict: $4.7M
- *Mohamed v. Society for Human Resource Mgmt.* – D. Colorado (Dec. 2025)
  - Verdict: $11,500,000 ($1.5M compensatory; $10M punitive)

REMEMBER

Section 1981 claims and some state law claims are not capped

Tips - Plan & Prepare

01 Have and publish a no-retaliation policy

02 Train employees to recognize protected activity

03 Coach managers to avoid reactions that could appear retaliatory

04 Apply policies and discipline consistently

05 Document and address performance concerns promptly

REMEMBER

Delayed or inconsistent performance management can make later action appear retaliatory.

Tips - React & Respond

01 Determine whether protected activity is involved and assess the risks

02 Investigate concerns promptly

03 Follow up with the person who raised the concern

04 Consider appropriate interim measures, including moving someone during investigation

05 Identify and correct any manager misconduct

REMEMBER

Reactive conduct or careless communications may themselves appear retaliatory.

Tips - Document

01 Ask for and document the basis for complained of conduct

02 Communicate thoughtfully about the protected activity and complaining party

03 Send meeting-summary emails

04 Review and correct automated notes

05 Insulate decision-makers from unnecessary knowledge of protected activity where possible

REMEMBER

Don't rely on incomplete or inaccurate records.

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Risk Management Masterclass:

How to Mitigate the Risk Around Retaliation Claims

Kerry A. Shad
Shameka C. Rolla
Dani D. Dobosz

October 28, 2026

Delta Means Change: THC and Other High Risk Issues

SMITH ANDERSON
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Delta Means Change: THC and Other High-Risk Issues

J. Travis Hockaday
James C. King
October 28, 2026

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What the numbers show…

- Hair test positivity rates among American workers reached 19.1% in 2025
  - Represents a 58.9% increase from 5 years ago
  - 2026 rates trending in line with 2025
- Meanwhile, urine drug test positivity rates have hovered around 4% for nearly a decade

(Quest Diagnostics 2026 Drug Testing Index)

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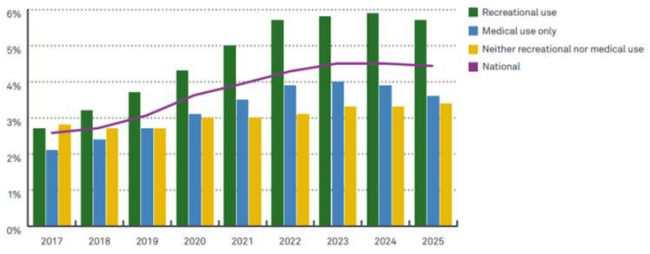
What the numbers show…

- Marijuana continues to be the largest driver of positive tests; accounted for 52.5% of hair drug test positives in 2025
- Traditional urine testing methods only capture drug use within a relatively short window of time, while hair analysis provides an extended detection window
- Findings suggest a sizeable portion of the U.S. workforce uses drugs, principally marijuana, on a recurring or chronic basis

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Marijuana Positivity by 2025 State Legalized Use Status: Urine Drug Tests | *Annual Report*

For general US workforce, as a percentage of all tests for marijuana metabolite



Drug category	2017	2018	2019	2020	2021	2022	2023	2024	2025
Recreational use	2.7%	3.1%	3.6%	4.1%	4.8%	5.5%	5.8%	5.9%	5.7%
Medical use only	2.1%	2.4%	2.7%	3.2%	3.6%	4.0%	4.0%	3.9%	3.6%
Neither recreational nor medical use	2.8%	2.7%	2.7%	3.0%	3.0%	3.1%	3.3%	3.3%	3.4%
National	2.6%	2.8%	3.1%	3.6%	3.9%	4.3%	4.5%	4.5%	4.4%

(Quest Diagnostics 2026 Drug Testing Index)

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State Laws on Marijuana

- **LEGAL** for **recreational and medical use**
  - AK, AZ, CA, CO, CT, DE, DC, IL, ME, MD, MA, MI, MN, MO, MT, NV, NJ, NM, NY, OH, OR, RI, VT, VA, WA
- **LEGAL** for **medical use only**
  - AL, AR, FL, HI, KY, LA, MS, NE, NH, ND, OK, PA, SD, UT, WV
- **LEGAL** for **CBD/Low-THC**
  - GA, IN, IA, NC, SC, TN, TX, WI, WY
- **NO** legal access
  - ID, KS

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State Laws on Marijuana

- Attitudes and laws continue to relax, but...
- Laws are CONSTANTLY CHANGING and INCONSISTENT
- Creating CONFUSION across the board for employers

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Trends in State Laws

- Some states with medical/recreational use laws provide little to no job-related protections for off-duty use of marijuana
- Others (generally states with newer laws) provide more protections for both medical/recreational use
  - States with earlier medical and recreational laws are taking steps to catch up with employee protections

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Trends in State Laws

- Based on premise that testing is meant to identify impairment, but most tests show only presence of THC metabolites, which do not reliably indicate current impairment
- Require clear policies regarding impairment (underscores need for defensible reasonable suspicion tests)
- Prohibit discriminating against or penalizing applicants/employees for use off the job and away from work (outright and/or through lawful use laws)

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Trends in State Laws

- Still do not require permitting employees to possess, be impaired by, or use while working or on company premises
- Generally permit exceptions for DOT-covered employees, safety-sensitive employees, compliance with federal contracts, applicants/employees requiring federal government background investigation/security clearance, etc.

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Employee Protections for Medical Use

- Employers never required to allow marijuana use at work or permit employees to work under the influence
- In some states, applicants/employees using medical marijuana have certain limited job protections
  - Protections vary: prohibit adverse action based solely on medical use; prohibit positive test from being automatic grounds for adverse action; disability accommodation; showing of impairment required for adverse action; private right of action
  - Exceptions apply for compliance with federal law and when federal funding is at stake

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Employee Protections for Medical Use

- In other medical use states, applicants/employees may have no, or no explicit, protection
  - Generally, no accommodation obligation, no private right of action, no restriction on discipline
- Status of protection unclear in some states
- Again, trending toward more express protections for medical use

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Restrictions on Pre-Employment Tests

- Some local jurisdictions have adopted stronger pre-employment protections for prospective employees
- Examples: New York City / Philadelphia
  - Prohibit employers from requiring prospective employees to submit to testing for presence of any THC or marijuana as condition of employment
  - Exemptions exist for certain safety-sensitive roles, DOT-covered workers, and where testing is required by applicable law

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Restrictions on Pre-Employment Tests

- California
  - With limited exceptions, employers cannot discriminate against an applicant based on off-duty use of cannabis
  - Employers also restricted from using information about an applicant's prior cannabis use that is obtained from other sources, such as criminal records

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Restrictions on Pre-Employment Tests

- Connecticut
  - Subject to limited exceptions, a positive test result for a THC metabolite cannot be the sole basis for refusing to hire an applicant unless:
    - The drug test was in connection with a conditional job offer
    - The employer has an established written policy that is provided to the prospective employee outlining the potential consequences of a positive test result

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Restrictions on Pre-Employment Tests

- New York (state)
  - Per DOL, no testing for cannabis unless employer permitted to do so under applicable state or other laws

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Restrictions on Pre-Employment Tests

- New Jersey
  - Can require pre-employment testing, but cannot take adverse action solely based on presence of marijuana (effectively bans pre-employment testing for marijuana)
  - Must meet "reasonable suspicion" standard – be able to articulate observable signs of impairment while employee is on the job
  - Requires use of a Workplace Impairment Recognition Expert (WIRE)

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Restrictions on Pre-Employment Tests

- Nevada
  - Can still test for marijuana, but unlawful to fail/refuse to hire prospective employee because of presence of marijuana in test
  - Exceptions exist for certain public safety positions, DOT-covered workers, workers whose positions could affect safety of others, etc.

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Restrictions on Pre-Employment Tests

- Washington
  - With limited exceptions, employers cannot discriminate against an applicant based on off-duty use of cannabis
  - Employers may require an applicant be tested for spectrum of controlled substances, which may include cannabis, as long as the cannabis results are not provided to the employer

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Restrictions on Pre-Employment Tests

- Multiple states only permit pre-employment testing when an offer already has been made, and the offer is contingent on the applicant's testing results

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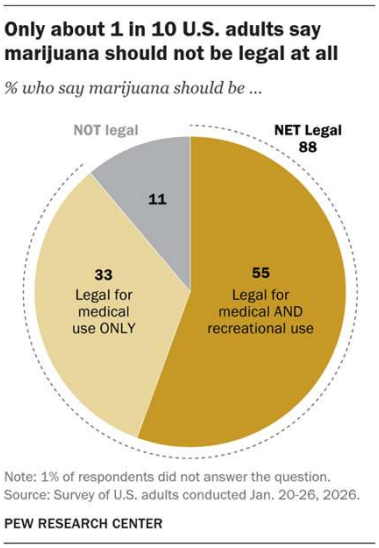
Pre-Employment Testing in NC

- Still OK
- But more to come on a potential wrinkle…

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Federal Trends

- Public support for legalization has increased for decades
- Executive Order 14370
  - Directed the Attorney General to reschedule marijuana from Schedule I to Schedule III
- Recreational use still illegal at federal level in all 50 states



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Status of Reschedule from I to III

- Schedule I
  - No currently accepted medical use; high potential for abuse
  - Examples: heroin, LSD, peyote
- Schedule II
  - Some accepted medical use; high potential for abuse
  - Examples: fentanyl, oxycodone, methamphetamine
- Schedule III
  - Accepted medical use; moderate to low potential for dependence
  - Examples: Tylenol with codeine, ketamine, anabolic steroids

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Status of Reschedule from I to III

- April 2026 – DEA rescheduled FDA-approved and state-regulated marijuana drug products to Schedule III
  - Still illegal, but federal penalties for some offenses reduced
  - Did not reschedule all marijuana; other marijuana remains Schedule I
  - Did not make recreational marijuana legal under federal law
- No effect on DOT testing
- Effort to reschedule "all marijuana" currently stayed by the courts

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Hazy Areas of the Law…

- 2018 - Congress removed hemp (defined as *Cannabis sativa L.* with a Delta-9 THC concentration of no more than 0.3% on a dry weight basis) from the Controlled Substances Act
  - Goal was to increase commercial production of hemp
- However, the bill also created a legal gray area that has grown into a multi-billion-dollar industry
  - Did not address other psychoactive/chemically similar cannabinoids (like Delta-8 THC)
  - Some producers argue the weight-based cap applies to the weight of the product being sold

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Planned Changes for 2026

- November 2025 - Congress passed new federal definition of "hemp" that restricts commercial hemp industry nationwide
- Hemp was redefined to address "loophole" and final-form hemp-derived cannabinoid products will be capped at 0.4 mg total THC per container
- Prohibition on synthetic cannabinoids is still set to go live November 12, 2026
- Limitation of THC per container has been delayed until December 2026

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What does this mean for employers?

- Rescheduling currently limited to state-regulated medical marijuana products and FDA-approved products
  - Recreational marijuana still illegal under federal law
- Rescheduling does not apply to employees working in "safety-sensitive" positions regulated by the U.S. Department of Transportation
- Some areas for potential change:
  - Drug testing programs
  - ADA accommodations
  - Employee discipline

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To test or not to test?

- Many employers forging ahead with testing as usual (where they can)
- Other employers are:
  - Concerned about staffing shortages, especially in states where marijuana is legal
  - Removing marijuana from testing panels in light of new laws and because positive test may not necessarily mean person is impaired at work
  - Evaluating applicants/positions on case-by-case basis
  - Testing only for regulated/safety-sensitive positions

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Testing Options – No Testing

- Stop all testing for marijuana/cannabis/THC
  - Unless required to test specific classes of employees under applicable law (for example, DOT-regulated employees)

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Testing Options – Tolerate Use

- Tolerate use only if allowed under applicable law; states will fall in different "buckets"
  - States in which marijuana is illegal – keep testing
  - States in which only medical use is legal – keep testing, but keep ADA/state law protections in mind for those testing positive for claimed medical use
  - States in which all use is legal – stop testing for it, or, if permitted, keep testing but use approach above for medical users
  - States in which all use is legal and testing is illegal – don't test for it

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ADA/Other Considerations

- No ADA duty to accommodate illegal drug use
  - But what is "illegal" now?
- State disability laws may create obligations around accommodation
- Interactive process for employees with disabilities who are medical marijuana users or are legally using other products
- Protections for individuals in recovery who are not currently using illegal drugs
- Leave for treatment

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Handling Requests for Use of THC

- HR to analyze request on case-by-case basis under applicable state law
- If no express state law covering circumstances (for example, if employee not seeking approval for medical use), tell employee company cannot "approve"
- If state law applicable to use for medical purposes, require employee to:
  - Provide documentation to support request for accommodation under ADA, including certification of HCP
  - Keep label from product being used in event of positive test

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NC Lawful Use of Lawful Products

- Unlawful employment practice for employer of 3 or more employees to fail or refuse to hire a prospective employee, or discharge or discriminate against any employee, because they engage in or have engaged in the lawful use of lawful products:
  - if the activity occurs off the premises of the employer during nonworking hours, and
  - does not adversely affect:
    - the employee's job performance or ability to properly fulfill the responsibilities of the position, or
    - the safety of other employees

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NC Lawful Use of Lawful Products

- Not a violation for an employer to:
  - Restrict lawful use of lawful products by employees during nonworking hours if restriction relates to (1) a bona fide occupational requirement and is reasonably related to employment activities, or (2) fundamental objectives of the organization
  - Discharge, discipline, or take any action against an employee because of their failure to comply with requirements of employer's substance abuse prevention program or recommendations of substance abuse prevention counselors employed or retained by the employer

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Anderson v. Diamondback Inv. Group

- Employee was terminated following two failed drug tests
  - Employee claimed positive tests were result of lawful use of lawful product to treat purported disability
- Employee filed lawsuit challenging her termination based on:
  - ADA disability discrimination
  - Wrongful termination in violation of NC's lawful use of lawful products law
- Employee specifically claimed use of lawful "over the counter" hemp-derived product containing Delta-9 THC to treat her anxiety

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Anderson v. Diamondback Inv. Group

- Fourth Circuit held:
  - Two positive drug tests were a legitimate and nondiscriminatory reason for termination
  - Employee had the burden of demonstrating that hemp-derived product was actually "lawful"
  - Even if product was lawful, employer safety concerns fell within exception to lawful products statute
- Takeaways:
  - Employees may need to demonstrate product used was "lawful"
  - Positive results may still serve as legitimate reason for termination

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Bottom line…

- NC's lawful use of lawful products statute generally will provide employees the right to use lawful CBD/Delta-8 THC products off duty, provided use does not undermine fundamental objectives of employer
- Are the products lawful?
  - That's complicated...

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Recommendations

- Keep current on evolving laws in states/localities in which you operate – use a color-coded map
- Decide how marijuana will be treated, considering state/local laws
- Always clearly prohibit possession, use, or impairment while working or in workplace
- Avoid advising applicants or employees regarding positivity risk of using Delta-8 THC or CBD products – you just don't know

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Recommendations

- Review and solidify reasonable suspicion processes and procedures
  - Train managers and supervisors!
  - Determinations should be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the employee
  - Summarize facts and circumstances surrounding the incident/observation
  - Test right away consistent with state law requirements

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Recommendations

Physical Indicators	Behavioral Indicators	Speech Indicators
❑ Bloodshot or watery eyes	❑ Fidgety/agitated	❑ Slurred or slowed speech
❑ Flushed or very pale complexion	❑ Irregular breathing	❑ Loud, boisterous
❑ Extensive sweating/skin clamminess	❑ Nausea/vomiting	❑ Incoherent, nonsensical
❑ Dilated or constricted pupils	❑ Slow reactions	❑ Repetitious, rambling
❑ Disheveled clothing/unkempt grooming	❑ Unstable walking	❑ Rapid, pressured
❑ Unfocused, blank stare	❑ Poor coordination	❑ Excessive talkativeness
❑ Runny or bleeding nose	❑ Hand tremors	❑ Exaggerated enunciation
❑ Jerky eye movement	❑ Suspicious, paranoid	❑ Cursing, inappropriate speech
❑ Body odor	❑ Depressed, withdrawn	❑ Inability to concentrate
	❑ Lackadaisical attitude	❑ Impulsive, unusual risk-taking
	❑ Irritable, moody	❑ Delayed decision-making
	❑ Extreme fatigue	❑ Reduced alertness

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Recommendations

- Perform regular evaluations of your drug testing programs to ensure compliance with evolving regulations
  - This includes providing updated training to supervisors/HR teammates as the laws change
- Consider applicable federal/state law protections before initiating any employee discipline

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Delta Means Change: THC and Other High-Risk Issues

J. Travis Hockaday
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October 28, 2026

AI Made the Call: Governing AI in Hiring, Performance, and Terminations

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AI Made the Call: Governing AI in Hiring, Performance, and Terminations

Kevin M. Ceglowski
Alena C. Carr
October 28, 2026

AI Adoption in HR – 2026 Snapshot

SHRM Survey, December 2025 (1,908 HR professionals)

- **39%** of HR professionals report AI already adopted in their HR function
- **60%** of extra-large organizations have implemented AI in HR (vs. 33% of small organizations)
- **31%** of organizations have no plans to launch AI initiatives anywhere
- Recruiting is the top AI use case. Larger firms focus on talent analytics; smaller ones on performance management

Eight Compliance Risks

Top pitfalls: legal standards, transparency, human oversight, vendor diligence, biased data

Example: AI résumé screener rejects 15% of women, with no explanation — Title VII risk

- 1. Failure to Meet Legal Standards
- 2. Insufficient Transparency
- 3. Neglecting Human Oversight
- 4. Vendor Reliance Without Due Diligence
- 5. Biased Training Data
- 6. Proxy Discrimination
- 7. Algorithmic Drift
- 8. Accessibility

Failure to Meet Legal Standards

Jurisdiction	Law and Status	Key Employer Duty
Federal	Title VII, ADA, ADEA — in force	Employer, not vendor, liable for AI disparate impact
Illinois	AI Video Interview Act; IHRA amendments — eff. Jan. 1, 2026	Notice of AI use; no discriminatory AI, including zip-code proxies
Maryland	Facial recognition law — in force	Applicant consent before facial recognition in interviews
New York City	AEDT Law — in force	Independent bias audit, public summary, advance notice
California	Civil Rights Council ADS rules — eff. Oct. 1, 2025; CPPA ADMT rules — final, compliance Jan. 1, 2027	AI can be employer's agent; pre-use notice for significant decisions
Colorado	SB 26-189 (repeals SB 24-205) — signed May 14, 2026; eff. Jan. 1, 2027	Notice; explanation after adverse outcome; human review on request
Texas	HB 149 — eff. Jan. 1, 2026	Bars intentional AI discrimination
Connecticut	Public Act 26-15 (SB 5) — signed 2026	AI-related WARN disclosure from Oct. 1, 2026; pre-decision AI notice from Oct. 1, 2027
Utah	AI Policy Act; consumer protection — in force	May reach employer AI use

Privacy laws (GDPR, CCPA, state statutes) also apply to AI-processed personal data.

Vendor Reliance Without Due Diligence

- Employers assume third-party AI tools are compliant, but liability falls on the employer
- Due diligence, audits, and contracts must explicitly address compliance responsibilities
- Before deploying any AI tool, know what factors it uses, how it weights them, and who validated that those factors are job-related

Tip: Require bias audit reports and validity studies from every AI vendor

Case Study: Amazon

Amazon's résumé screener, trained on past male-heavy data, down-ranked résumés from women's colleges

— **the algorithm**—*not a human*—made the call.

Mobley v. Workday: Landmark Litigation

Background: Derek Mobley, a Black man over 40 who self-identifies as having anxiety and depression, applied to 100+ Workday-screened jobs. Rejected every time

Claims: Race, age, and disability discrimination. Workday sued as agent of employer-clients

Key Rulings:

- July 2024 — Motion to dismiss denied; disparate impact proceeds
- May 2025 — ADEA collective certification (applicants 40+ since Sept. 2020)
- March 2026 — ADEA protections extend to applicants; Loper Bright defense rejected
- June 2026 — All core claims survive

Why It Matters: One lawsuit can sweep in every employer using the same tool

Kistler v. Eightfold AI: A New Theory of Liability

Filed: Kistler v. Eightfold AI (N.D. Cal., Jan. 2026).

Allegations: Eightfold scraped online data to build candidate dossiers and scored applicants 0-5 without consent

FCRA Theory: Unregistered consumer reporting agency. $100-$1,000 per willful violation

Why It Matters: A "match score" may be both disparate impact (Title VII) and an unregulated consumer report (FCRA)

Action: Ask vendors whether the tool accesses third-party data. Confirm FCRA disclosures

Proxy Discrimination

- AI may use neutral-seeming factors (zip code, college, employment gaps) as proxies for protected characteristics, causing disparate impact
- Omitting protected-class data does not fix the problem — the algorithm relies on indirect indicators
- **Example:** One tool found a correlation between being named Jared, playing high school lacrosse, and job success — no rational connection to performance
- **Tip:** Review AI outputs for disparate impact at every decision point — screening, interview, offer, and hire — annually, under privilege

Algorithmic Drift

- AI models drift over time, creating new biases without any code change. The tool you audited at deployment may produce different outputs 12 months later
- **Example:** A pre-2020 model penalized employment gaps. Post-pandemic, gaps became common and unrelated to performance — a model that didn't recalibrate is still penalizing them
- Require your vendor contract to specify when and how the model is retrained, and whether revalidation occurs before changes go live
- **Tip:** Review AI tool outputs for disparate impact, accuracy, and reliability annually under privilege

Accessibility

- AI-driven assessments (gamified testing, voice analysis) may disadvantage people with disabilities, non-native speakers, or underrepresented groups
- Require vendors to document WCAG compliance at the highest level and to provide accommodations for visual, hearing, physical, and cognitive impairments
- Ensure applicants have a clear process to request disability accommodations and are notified of it
- **EEOC:** Charges filed in 2025 allege a video interview platform's speech recognition performed worse for a deaf applicant, her accommodation request was denied, and the AI told her to "practice active listening"

What Employers Must Do

First task: If you are using an AI hiring tool and have not run an adverse impact analysis, start there

- **Outcome analytics:** Document hiring decisions and override criteria. Analyze outcomes across age, race, gender, and disability status
- **Bias audits and human review:** Pre-deployment and annual audits under privilege. Maintain qualified human review with documented override authority
- **Vendor indemnity:** Require bias audit reports and validity studies. Contracts must address nondiscrimination, indemnification, and data transparency
- **EPLI and arbitration:** Review coverage for AI-related claims. Confirm mandatory arbitration agreements cover AI-driven employment decisions

AI in Termination: Entry Points and Disparate Impact

Four Entry Points:

- **1. Stack-ranking:** Bell-curve performance scores; bottom percentage terminated
- **2. Predictive attrition:** "Flight risk" models forecast resignations
- **3. Automated PIPs:** Systems flag underperformance algorithmically
- **4. AI-assisted RIF:** AI scores employees for layoff selection

Illinois: 775 ILCS 5/2-102(L) — notify employee when AI facilitates discharge

Connecticut: Public Act 26-15 § 26 — WARN notice must state if AI informed the RIF

Tip: Run the hiring funnel in reverse — same analytics, applied to who exits

The "Black-Box" Termination: Explainability and Human Review

The problem: "The system flagged her" is not a valid explanation. The employer must articulate a clear, legitimate reason a decision-maker can explain.

- Unexplainable reasons look like pretext. Shifting explanations support an inference of discrimination
- An employer who adopts a biased AI output without independent review inherits its bias

CA SB 947 ("No Robo Bosses Act"): Enacted Sept. 30, 2026; operative July 1, 2027. Regulates employer use of automated decision systems in discipline and termination decisions.

AI-Assisted RIFs: Adverse Impact and Override

Pre-RIF: Analyze the AI list under privilege. Define decisional unit; compare rates by class

Four-fifths rule: If one group keeps jobs at <80% the best-faring group's rate, red flag. 29 C.F.R. § 1607.4(D)

Age exposure: Tenure, salary, attrition risk can track age. ADEA claims available

OWBPA: Disclose what AI did. Defective disclosure may void the ADEA waiver

Override: Document authority to reject AI, reviewer's access and reasons, and override rate

Vendor Due Diligence: Five Questions To Pressure Test Your Vendor

Five Questions To Pressure Test Your Vendor:

1. "Can you give us the full bias audit report, including selection rates by race and sex — not a summary?"
2. "Has this tool been the subject of litigation or administrative charges anywhere?"
3. "Has the tool been validated for our specific use case, not just generally?"
4. "Does the tool access any third-party data beyond what the candidate submitted?"
5. "What are your litigation hold procedures, and can we access the algorithm if we face a claim?"

GenAI Risks and Policy Must-Haves

Risks:

- **Trade secrets:** Public AI input may destroy DTSA/UTSA protection
- **Privilege:** *Heppner* (S.D.N.Y. 2026) — public AI may waive attorney-client privilege
- **Privacy:** Employee/customer data in public AI may violate GDPR, CCPA, BIPA
- **Accuracy:** Unreviewed AI output creates liability exposure

Three Must-Haves:

1. Approved tools: Specify platforms; prohibit confidential data in non-approved tools

2. Verification: Human review of all AI work product; disclose AI use where required

3. NLRA guardrail: Do not ban AI use for discussing wages or conditions — Section 7 applies

AI Deep Fakes and Job Seeker Cheats

Gartner 4Q24 survey (3,290 candidates):

- 4 in 10 candidates used AI during the application process — résumé (54%), cover letter (50%), writing sample (36%), assessment answers (29%)

Gartner 2Q25 survey (3,000 candidates):

- 6% admitted to interview fraud — posing as someone else or having another person sit in

Gartner predicts: by 2028, one in four candidate profiles worldwide will be fake

AI Deepfakes in Workplace Investigations

Only 17% of HR professionals say they are confident they can distinguish authentic video from AI-generated video in investigations.

40% of organizations are taking no action — one investigation away from acting on fabricated evidence.

Risk: A fabricated video or audio introduced during an investigation could drive wrongful termination or legal exposure.

Recommended Steps:

- Update AI use policies and codes of conduct to address AI misuse
- Train HR staff on detecting red flags (audio/video inconsistencies, metadata anomalies)
- Engage third-party forensic experts when AI-generated content is suspected

Fake Candidates: Red Flags and Controls

Red Flags — Hiring:

- Inconsistent LinkedIn; no photo or AI image; near-perfect résumé
- Scripted answers; refuses camera; can't answer location questions
- References lack real emails; no digital footprint; fraudulent documents

Red Flags — Post-Hire:

- Looks different; refuses video; foreign IP; immediate address change

Controls:

- Photo ID on camera; spontaneous questions; prohibit headphones
- EDR software; detect RDP/multi-location logins; retain location records
- In-person I-9 and onboarding; verify direct-deposit name match

Rule: Three or more flags — pause and verify


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PWFA, Pregnancy, and Mental Health: Navigating the Accommodation Landscape

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PWFA, Pregnancy, and Mental Health: Navigating the Accommodation Landscape

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October 28, 2026

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Pregnant Workers Fairness Act

Pre-PWFA & Post-PWFA

Before the PWFA

Young v. United Parcel Service, Inc., 575 U.S. 206 (2015)

- The Supreme Court held that courts must evaluate the extent to which an employer's policy treats pregnant workers less favorably than non-pregnant workers with similar inabilities to work
- Under the Pregnancy Discrimination Act, a pregnant worker had to point to comparators; there was no freestanding duty to accommodate

June 27, 2023 | PWFA takes effect

Employers with 15 or more employees must accommodate a qualified worker's known limitations related to pregnancy, childbirth, or related medical conditions.

June 18, 2024 | EEOC final rule effective

The EEOC's final regulation and interpretive guidance, issued in April 2024, define related medical conditions broadly and add the four predictable assessments.

May 21, 2025 | Fed District Court vacates elective abortion provisions

A Louisiana federal district court vacated the portions of the final rule requiring accommodation of elective abortion.

Charge volume and enforcement focus

PWFA charges rose from 2,729 in FY 2024 to 3,448 in FY 2025. New EEOC leadership in 2025 signaled a focus on core accommodations.

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Who Is Covered by the PWFA?

Covered employers

- Private and public employers with 15 or more employees
- Employment agencies, labor organizations, and federal agencies are also covered

Protected individuals

Employees and applicants who are "qualified." The limitation must relate to the worker's own pregnancy, childbirth, or related medical condition.

"Qualified" — path one

The worker can perform the essential functions of the job with or without a reasonable accommodation.

"Qualified" — path two

The worker cannot currently perform an essential function, but the inability is temporary, the function could be performed in the near future (generally presumed to be 40 weeks for a current pregnancy), and the inability can be reasonably accommodated — including by temporarily suspending the function.

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"Known Limitation"

Two words, two requirements

Known

The worker, or a representative such as a family member, union representative, or health care provider, has communicated the limitation to the employer.

Limitation

A physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition. It may be modest, minor, or episodic and need not meet the ADA definition of disability.

Common examples

Morning sickness, fatigue, and pelvic pain; prenatal and postpartum appointments; lactation; miscarriage, pregnancy loss, and recovery from childbirth.

Mental health conditions count

Postpartum depression and anxiety are known limitations under the PWFA

No sole-cause requirement

Pregnancy, childbirth, or the related medical condition does not have to be the sole, original, or substantial cause of the limitation.

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Reasonable Accommodations

What counts

- Changes in the work environment, or in the way things are customarily done, that let the worker keep working
- The analysis generally follows the ADA — with one key addition: temporary suspension of an essential function
- Needs change over time. What works in the first trimester may not work in the third or postpartum, so build in check-ins

The four predictable assessments (for pregnancy)

(1) Having water available and drinking it; (2) additional restroom breaks; (3) sitting/standing as needed; (4) breaks to eat and drink.

These are virtually always reasonable and not an undue hardship.

Other common accommodations

Flexible breaks, changes to food and drink policies, a stool to sit on, dress code changes, telework, leave for medical appointments, assistance with manual labor, and temporary reassignment.

Lactation

The PUMP Act requires reasonable break time and a private, non-bathroom space for one year after birth. The PWFA can require lactation accommodations beyond that.

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Medical Documentation

The rule

A request *is not* reasonable when:

- The limitation is obvious — for example, a pregnant employee asks for a larger uniform
- The employer already has sufficient information
- The employee is pregnant and the request is one of the four predictable assessments, confirmed by the employee
- The employee is lactating and needs modifications to pump at work
- The employer would not request documentation in a comparable situation — for example, a policy requiring a doctor's note only for absences of three or more consecutive days

Guardrails when a request is reasonable:

- Limit the request to confirmation of the physical or mental condition, confirmation that it relates to pregnancy, childbirth, or a related medical condition, and the change needed at work and its expected duration
- No specific form may be required
- The employer may not require the worker to be examined by a health care provider of the employer's choosing
- Keep all documentation confidential and separate from the general personnel file, as under the ADA

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The Key Employer Obligations

Accommodate

- Provide reasonable accommodations for known limitations unless they impose an undue hardship
- Engage in the interactive process
- Respond without unnecessary delay — delay alone may be a violation
- Consider an interim accommodation while the process runs

Do not force

- Do not require an accommodation that was not arrived at through the interactive process
- Do not require leave, paid or unpaid, if another reasonable accommodation would let the employee keep working
- Leave is an accommodation of last resort

Do not penalize

- Do not deny opportunities because of the need for an accommodation
- Do not take adverse action for requesting or using an accommodation
- No retaliation, coercion, or interference — including leaving productivity metrics unadjusted when an employee works fewer hours

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PWFA Settlements

Polaris Industries, Inc.

N.D. Ala. | settled July 2025

- The EEOC alleged the employer penalized an employee for pregnancy-related absences and medical appointments and required mandatory overtime despite her physician's direction that she not work more than 40 hours per week.
- She was told she would be terminated if she accumulated additional attendance points for any reason, and she resigned.
- Settled for $55,000.

Marsha Rucker (regional attorney for the EEOC's Birmingham District): "The PWFA ensures that pregnant employees have the opportunity to seek and receive reasonable accommodations. The EEOC will make sure employers that fall short of this obligation are held accountable."

Urologic Specialists of Oklahoma, Inc.

N.D. Okla. | settled February 2026

- A pregnant worker asked for permission to sit, take short breaks, or work part time.
- The EEOC alleged the employer required unpaid leave, refused to guarantee her job on return, and refused to commit to lactation breaks after childbirth.
- Settled for $90,000.

Joshua C. Stockton (lead EEOC trial attorney): "The PWFA's requirements are simple and fair. The policies and procedures required by this decree are a model that all employers should follow to ensure that pregnant women are never forced to choose between their jobs and their health and safety."

HR takeaways

- Requests to sit and take short breaks fall within the predictable assessments — grant them.
- Leave is a last resort, not a first response.
- Attendance and overtime policies should flex for pregnancy-related limitations.

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The PWFA's Interactive Process

Managing PWFA Requests with Confidence

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Spot the Request

No magic words required

What makes a request

- It can be verbal or written, and made to any supervisor, manager, or HR representative
- It can come from the employee's representative — a family member, union representative, or health care provider
- The worker need not mention the PWFA or use the phrase "reasonable accommodation"

Each of these is enough to start the process

- "I'm having trouble getting to work on time because of morning sickness"
- "I'm worried about hurting myself or the baby if I lift these boxes"
- "I need time off for a pregnancy-related appointment"

The wrong channel still counts

The request still counts if the worker skips the Company form/portal

Train the front door

Frontline managers do not have to decide anything. They need to recognize the request, acknowledge it, and route it to HR promptly

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A Practical Interactive Process

1. Acknowledge & listen
- Respond and act promptly
- Ask what the limitation is and what change is needed
- Consider an interim accommodation right away
- Request documentation only if it is reasonable to do so

2. Explore & assess
- Brainstorm options together and consider the employee's preference
- Assess undue hardship case by case
- Do not default to leave
- The employer may choose among effective options but cannot impose one the interactive process did not produce

3. Implement & follow up
- Confirm the accommodation in writing
- Calendar check-ins as needs change
- Document each step: the request, the options considered, the selection, and implementation
- Document any failure to engage in the process

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Medical Documentation: *Ask Less*

HR quick reference

Do not ask when
- The limitation is obvious — for example, a larger uniform
- The employer already has enough information
- The request is one of the four predictable assessments and the employee confirms the pregnancy and the need
- The request relates to pumping or nursing at work
- You would not require documentation in a comparable situation

If you do ask, limit it to
- Confirmation of the physical or mental condition
- Confirmation that it is related to, affected by, or arising out of pregnancy, childbirth, or a related condition
- The change needed at work and its expected duration

Self-confirmation from the employee is often enough, and a diagnosis is not required. Asking for more than you need can support a PWFA or retaliation claim.

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Limits and Defenses

Undue hardship

- Significant difficulty or expense, assessed case by case against the employer's resources and operations — the same framework as the ADA.
- Where the accommodation is the ***temporary suspension of an essential function***, there are additional factors, including how long the employee will be unable to perform the function, whether there is work for the employee to accomplish, the nature and frequency of the function, whether similar suspensions were granted to others in similar positions, whether others could perform or be hired to perform the function, and whether the function can be postponed.

Document the analysis!

Not a "known" limitation

The limitation was never communicated to the employer or anyone who could act on it.

Not "qualified"

The inability to perform an essential function is not temporary, could not be performed in the near future, or cannot be reasonably accommodated.

Choice of accommodation

The employer may select among effective options; the employee is entitled to an effective accommodation, not the accommodation of choice.

Good-faith efforts

Consulting with the employee in a good-faith effort to identify an accommodation can limit damages.

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Anticipated Developments

Litigation over related medical conditions

A Louisiana federal judge ordered the EEOC to remove a portion of the PWFA final rule related to elective abortions as a condition for which employers are required to make reasonable accommodations.

EEOC leadership

Chair Andrea Lucas voted against the final rule and has said she intends for the Commission to reconsider portions she believes are unsupported by law — including accommodation for menstruation, infertility, and menopause, which in her view are not caused by a particular pregnancy or childbirth.

What to watch

Possible rulemaking narrowing related medical conditions — and the resulting need to revisit accommodation policies and manager training.

The ADA

Reasonable Accommodations – Mental Health

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Why It Matters: Mental Health

EEOC Charge Data

8,400+
FY 2021 charges alleging mental health or substance use disorder discrimination

22,843
FY 2021 total disability-related charges

36,256
FY 2025 total disability-related charges

~13,300 estimated mental health charges in FY 2025
If mental health claims held at the FY 2021 share (about 37% of disability charges), FY 2025 would see roughly 13,332 such charges, and the true number is likely higher.

NAMI Statistics

23.4%
of U.S. adults experienced mental illness in 2024

61.5M
people, or about 1 in 5 adults

Sources: U.S. Equal Employment Opportunity Commission charge data (2021, 2025); National Alliance on Mental Illness. 2025 mental health figure is an estimate.

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ADA Basics: What the Law Requires

- **Who is protected:** A "qualified individual" with a disability who, with or without reasonable accommodation, can perform the essential functions of the job
- **The core duty:** Provide a reasonable accommodation for known limitations unless doing so would impose an undue hardship
- **What an accommodation is:** Any change in the work environment or the way things are customarily done
- **Employer flexibility:** The employee is entitled to an effective accommodation, not necessarily the accommodation of choice
- **Limits:** Employers are not required to eliminate essential functions
- **Privacy:** Medical inquiries are limited (e.g., when an accommodation is requested), and medical information must be kept confidential

Mental Health: Usually a Covered Disability

Why coverage is the norm

Per the EEOC, major depression, PTSD, bipolar disorder, schizophrenia, and OCD "should easily qualify" — and many others will too.

In most cases, individuals with diagnosed mental health conditions are covered and have a right to accommodation.

Medication/therapy/treatment does not remove protections
Coverage is judged as if the condition were left untreated; medication or therapy does not remove protection.

Not permanent or severe
A condition need not be permanent or severe to be "substantially limiting."

Episodic conditions count
If symptoms come and go, what matters is how limiting they are when active.

Practical tip
Spend less time debating coverage and more time on the interactive process.

Defenses: Direct Threat & Undue Hardship

Direct Threat

A significant risk of substantial harm to self or others that cannot be eliminated or reduced by accommodation. "Significant" means high, not slightly increased.

Requires an individualized assessment of present ability, based on current medical knowledge or objective evidence.

Factors: duration of the risk; nature and severity of harm; likelihood; imminence; whether reasonable modifications of policies/practices could mitigate the risk.

Identify the specific behavior that poses the threat. A diagnosis, treatment history, or medication alone is not enough.

Example: an employee returning to work with clearance from their provider after a mental health-related hospitalization usually does not pose a direct threat; assess individually.

Undue Hardship

Significant difficulty or expense, judged against the employer's resources and operations. Not limited to cost.

Factors: cost (including the possibility of outside funding/tax credits); facility and company resources and size; type of operation; impact on operations.

Applies to the specific accommodation. If an alternative would not be an undue hardship, it must be provided.

Hardship is employer-specific: what is too costly or disruptive for one employer may not be for another.

HR tip: document the specific risk or hardship and the alternatives considered. Conclusory statements will not hold up.

Mental Health Requests: The Interactive Process

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Recognize the request No magic words needed: any statement that a change is needed due to a medical condition triggers the process. Watch for known conditions + performance issues.	**Respond promptly** Acknowledge and direct the employee to HR/LOA resources. Delay or silence can itself support a claim.	**Limit records requests** Ask only what is needed to confirm the disability and the need for accommodation. Keep it confidential and separate from general personnel file.	**Understand limitations** Focus on functional limits (concentration, stress, schedules), not the diagnosis. Review essential functions.	**Explore options** Flexible schedules for therapy, quiet space, written instructions, breaks, remote work, leave, reassignment as an accommodation of last resort.	**Decide, document, follow up** Choose an effective option, explain any denial and alternatives, and check in; the process is ongoing. If undue hardship is identified, document the supportive reasoning.

Example 1: EEOC v. Ranew's Management Company, Inc.

M.D. Ga. Complaint filed Dec. 20, 2021 (Settled in 2022) — Depression

What happened

Employee at a metal fabrication company told the company he had depression and requested time off. The company allowed him to take the time. When he returned, he was fired because the CEO said he could not trust him to perform his duties.

Outcome / status

EEOC attempted pre-litigation settlement. After filing a complaint, EEOC ultimately settled for $250,000 with reporting and monitoring requirements.

EEOC issued a press release – "the ADA makes it clear that employment decisions must be made based on employee qualifications rather than on stereotypes about an employee's disability."

HR takeaway

Assess the real facts of the matter, not assumptions based on stereotypes.

Example 2: Nimon v. The Shadowfax Corporation

M.D. Pa. complaint filed July 28, 2026 — Depression & anxiety (allegations only)

What happened

Associate Director alleges his employer knew of his depression and anxiety through FMLA paperwork and provider documentation. He requested a predictable schedule, clarified duties, limits on direct-care duties, and remote work.

The employer "delayed, resisted, and ultimately imposed a one-sided accommodation proposal that did not address his actual medical restrictions" and he was later terminated.

Outcome / status

Newly filed; no findings have been made.
The complaint asserts ADA claims based on notice through FMLA documents, medical records, and repeated requests.

HR takeaway

Coordinate FMLA and ADA processes.

Requests like schedule predictability and role clarity are common mental health asks — evaluate each one.

Do not unreasonably delay the process.

Do engage in good faith in the interactive process.

Document undue hardship.

Example 3: Allard v. Allegheny Health Network

W.D. Pa. July 6, 2026 - PPD/Outburst

What happened

In 2019, employer granted accommodations to a NICU charge nurse to move to day shift due to PPD. In 2023, she engaged in a serious event where she repeatedly yelled a patient's family, threw her badge, and ran through the unit yelling profanities. Following that outburst, she claimed a "mental break" and was granted a medical leave of absence for an "acute stress reaction" related to the incident. She was fired for the 2023 incident.

Outcome / status

Summary judgment for the employer. The record demonstrated a non-disability-related reason for her termination.

"Requiring others—like critically ill patients, their families, and fellow nurses—to tolerate misconduct is not the kind of accommodation contemplated by the ADA."

HR takeaway

The termination was for a legitimate inappropriate interaction with a patient's family, unrelated to her medical leave that followed a previous accommodation.

Example 4: Remote Work Requests After RTO

EEOC enforcement (2023-2024) — Telework as accommodation

What happened

As return-to-office policies expand, employees increasingly request work-from-home accommodations, including for mental health conditions.

EEOC has FAQs on in the federal sector.

The EEOC has sued employers over denied telework requests (e.g., EEOC v. United Labor Agency (N.D. Ohio 2023)) (the employer required all employees to RTO after the pandemic).

Outcome / status

United Labor Agency resolved with compensation ($32,271) plus training and reporting obligations.

Note: remote work would be unreasonable where it eliminates an essential function (for example, daycare worker).

HR takeaway

Telework is not automatic, but a blanket "no" is risky.

Tie the analysis to documented essential functions. Treat similarly situated employees consistently.

Telework primarily for the employee's personal benefit, is not a recognized reasonable accommodation.

Employers can revisit previously granted accommodations.

Comparing the Processes: PWFA vs. ADA

Issue	ADA	PWFA
Covered condition	Disability that substantially limits a major life activity; only covers "impairments" related to pregnancy	Known limitation related to, affected by, or arising out of pregnancy, childbirth, or related conditions; may be modest, minor, or episodic
Essential functions	Never required to eliminate essential functions	**Temporary suspension may be required (generally up to 40 weeks for a current pregnancy) absent undue hardship**
Documentation	May request reasonable documentation of disability and need	Not required; permitted only when reasonable, and often not reasonable for obvious or routine needs
Leave	Leave may be a reasonable accommodation	Cannot require leave if another accommodation lets the employee keep working
Shared ground	Interactive process; undue hardship defense; 15+ employees	Same terms, some broader obligations

Hypothetical 1: The Return-to-Office Request

Optional discussion exercise

The Scenario

Morgan, a marketing specialist, worked remotely during the pandemic with strong performance reviews.

The company now requires four days per week in the office. Morgan submits a note from a psychiatrist stating Morgan has generalized anxiety disorder and asks to remain fully remote.

Morgan's manager says in-person collaboration is important, but several employees on the same team have been approved for hybrid schedules for personal reasons.

Discuss

1. Is full-time remote work a reasonable accommodation here?
2. How should HR evaluate which job functions are essential?
3. What alternatives could address Morgan's limitations?
4. Does the treatment of other employees matter?

Based on: EEOC telework guidance; Freeman v. City of Cheyenne (D. Wyo. 2023); EEOC v. ISS Facility Services (N.D. Ga. 2021); ADA National Network.

Hypothetical 2: "I Need a New Manager"

Optional discussion exercise

The Scenario	Discuss
Riley, a project coordinator, provides a note from a therapist stating Riley has an anxiety disorder. Riley says the manager's last-minute verbal assignments and open criticism in team meetings trigger panic attacks and asks to be transferred to a different supervisor. There are no open coordinator roles under other managers.	1. Must the employer grant a new supervisor? 2. What alternatives could address the limitation? 3. What documentation can HR request?

Based on: EEOC Reasonable Accommodation Guidance, Q. 33; EEOC mental health guidance; ADA National Network.

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PWFA Hypothetical

The scenario

Emma, a customer service representative, is in her second trimester.

Fatigue and nausea make long periods at her desk difficult, and she needs frequent restroom breaks.

At a routine check-in, she tells her supervisor she is pregnant and is struggling to keep up.

Discuss

- Has Emma made a request for an accommodation?
- What should the supervisor do today?
- May HR ask for a doctor's note before granting restroom breaks?

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PWFA Hypothetical

Guidance

Recognize & route

- Treat the conversation as a request — no magic words are needed.
- Acknowledge it and route it to HR promptly rather than treating it as venting.

Accommodate

- Grant restroom breaks — this is a predictable assessment.
- Explore options such as flexible breaks, workstation changes, or telework.
- Adjust call-handling metrics so the breaks are not penalized.

Document & follow up

- Confirm the accommodation in writing.
- Schedule a follow-up as the pregnancy progresses and needs change.
- Record each step of the process, including options considered.

Thank You

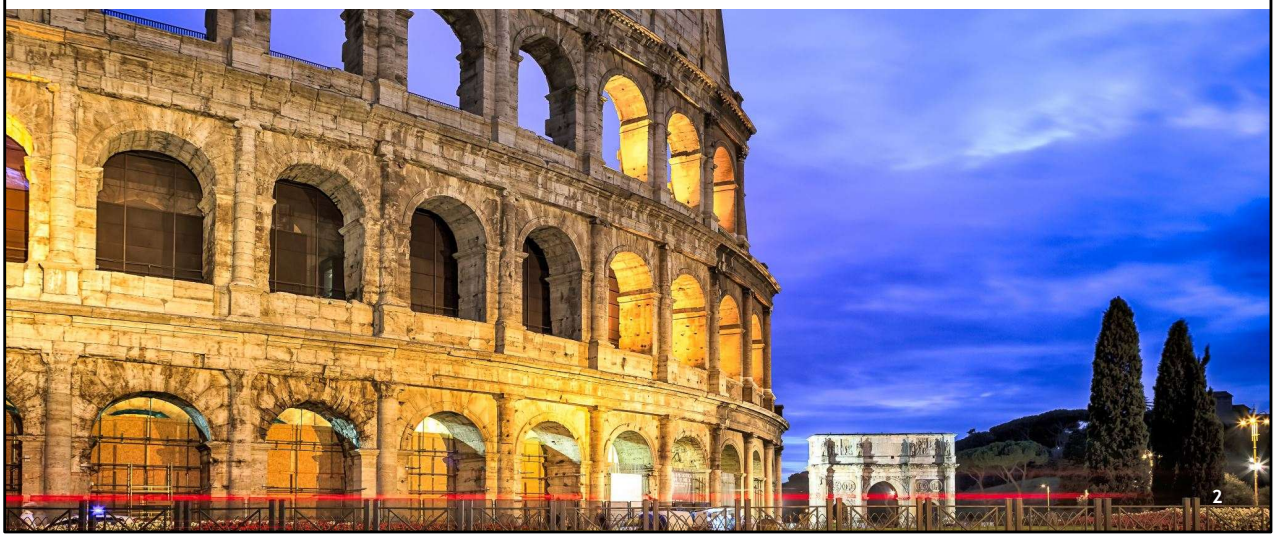
Learn More:


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PWFA, Pregnancy, and Mental Health: Navigating the Accommodation Landscape
Taylor M. Dewberry
Lauren E. Davis
October 28, 2026

Fifty Shades of a Compliance Plan: When Employees are Here, There, and Everywhere


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Fifty Shades of a Compliance Plan:
When Employees are Here, There, and Everywhere
Kimberly J. Korando
Bella Thoren
October 28, 2026

When in Rome…



Today

Why Multi-State Compliance Matters
The Checklist Framework
High-Priority Topics
Compliance Strategy Approaches
Takeaways and Action Items

Why Multi-State Compliance Matters

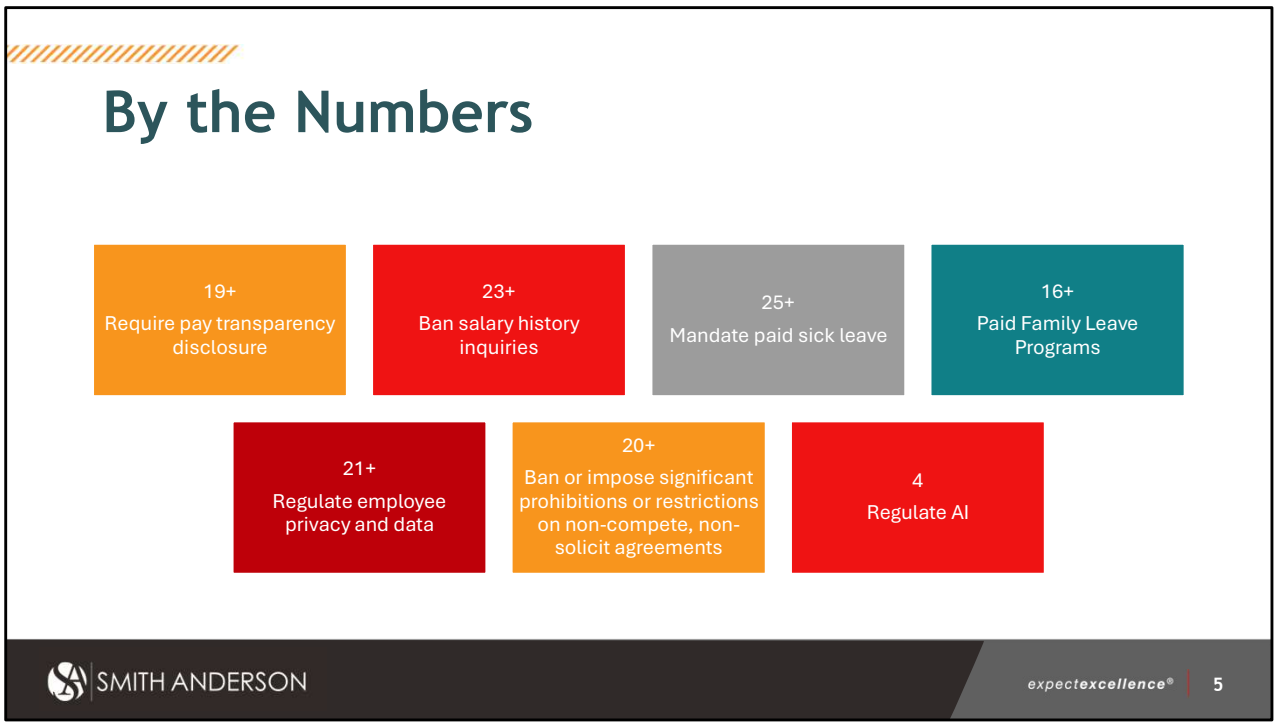
States have emerged as the primary drivers of employment law reform

Many state laws cover topics not address in federal law

Many state laws exceed federal standards

Multi-state employers face differing requirements varying by jurisdiction, headcount, industry and municipality

Non-compliance consequences are significant and growing—enforcement actions (civil and criminal), private lawsuits, class actions, reputational risk



These are the fastest growing areas of state employment law.



A Multi-State Employer Checklist is attached as an Appendix to these materials.

CHECKLIST PRACTICAL GUIDANCE

Use the Checklist

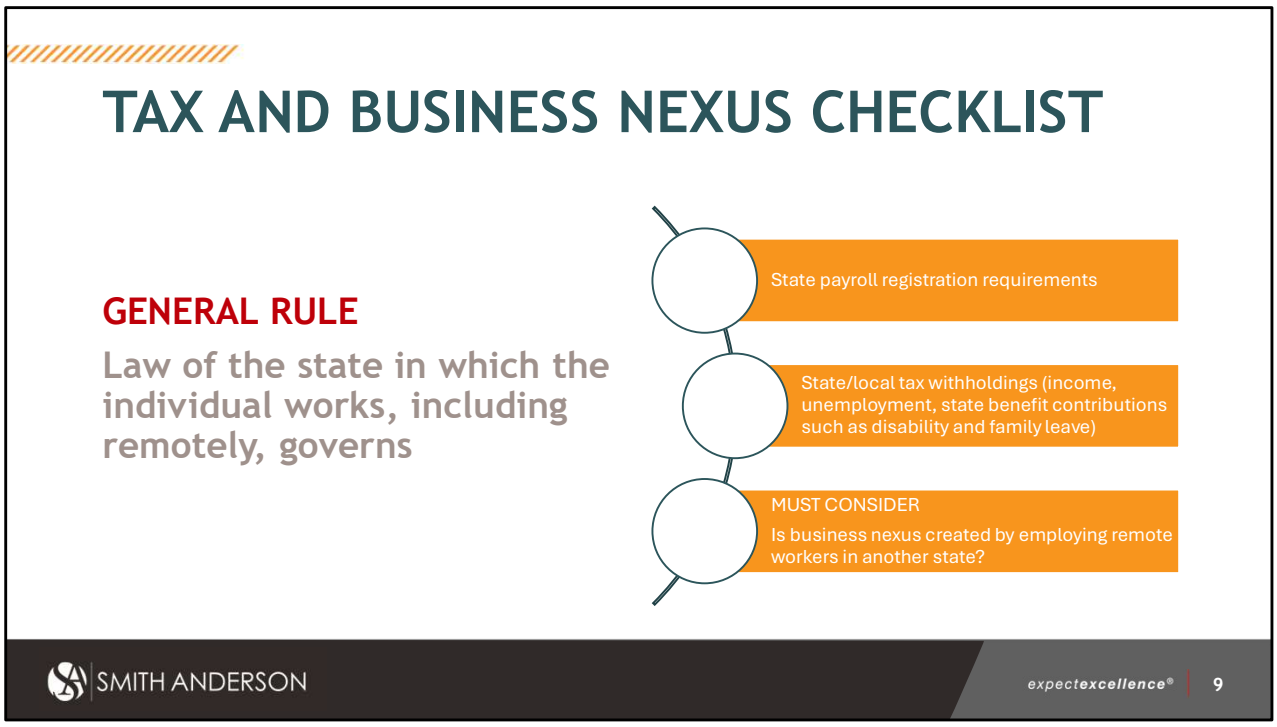
- When employing workers in a new state
- Policy development and revision
- Annual compliance reviews
- M&A due diligence

Best Practices

- Complete the checklist for each jurisdiction in which you employ workers
- Prioritize categories based on where workers located and how many
- Update the checklist annually

CHECKLIST CATEGORIES

Tax, Benefits Mandates, Business Nexus	Hiring and Onboarding	Technology and AI in Employment	Worker Classification and Joint Liability	Wage and Hour
Time-Off Law	Discrimination, Harassment, Whistleblowing, Protected Activities	Employee Privacy and Data	Restrictive Covenants	Drug Testing and Substance Abuse
	Workplace Safety and Health	Labor Relations	Termination and Separation	



Notes

State disability insurance programs (including CA, HI, NJ, NY, RI, and PR)

STATE BENEFIT MANDATES CHECKLIST

- State disability insurance programs
- State-mandated family leave contribution programs
- State health insurance requirements and supplements
- State-mandated retirement savings programs
- Workers' compensation coverage requirements, reporting, return to work

HIRING AND ONBOARDING CHECKLIST

- Job posting pay/benefits transparency requirements; ghost job restrictions
- Salary history inquiry bans
- E-Verify requirements (varying by state and employer size or industry)
- New hire reporting requirements
- New hire disclosure requirements (wage rate, pay schedule, benefits, and written notices)
- Background check requirements and restrictions (timing/scope of inquiries; adverse action procedures)
- Criminal history restrictions / ban-the-box / fair chance hiring laws (timing/scope of inquiries; expungement protections; adverse action procedures)
- State poster and notice requirements
- Employee v. independent-contractor tests

TECHNOLOGY AND AI IN EMPLOYMENT CHECKLIST



USE OF ARTIFICIAL INTELLIGENCE IN HIRING AND EMPLOYMENT DECISIONS



AUTOMATED DECISION-MAKING DISCLOSURE REQUIREMENTS, BIAS AUDITS



ELECTRONIC MONITORING NOTICE REQUIREMENTS

WAGE AND HOUR CHECKLIST

Issue	Key Compliance Topics
Exempt Employees	Higher minimum salary thresholds Higher duties requirements
Non-Exempt Employees	Higher state/and local rates above federal $7.25; annual adjustments Overtime requirements and exemptions Prevailing wage requirements for public works Tip credit and tip pooling rules
Scheduling	Meal break and rest break requirements (timing, duration, waiver, penalties) Fair Workweek/Predictive Scheduling restrictions (including reporting-time, scheduling, advance schedule notice, and related premium-pay rules)
Payment Requirements	Frequency Deduction/forfeiture/garnishment rules Pay statement disclosures Business expense reimbursement Commuter benefits requirements PTO mandatory annual carry-over/payout; mandatory payout at termination Final pay

TIME-OFF/LEAVE CHECKLIST

Leave	Key Compliance Issues
Sick Leave	Paid v. Unpaid; State Funding Program; Covered Absences; Amount of Leave; Eligibility; Notice (Employer/Employee) Requirements
Family and Medical Leave	Paid v. Unpaid; State Funding Program; Covered Absences; Amount of Leave; Eligibility; Notice (Employer/Employee) Requirements
Paid Time Off Mandate	Amount of PTO; Eligibility; Notice (Employer/Employee) Requirements; Carry-over; Forfeiture; Payout Requirements
Other Mandatory Time-Off/Leave (bereavement, jury duty, crime victim, domestic violence, witness, court attendance, voting, school activity, military/CAP/emergency responder, organ/bone marrow donor, small necessities)	Paid v. Unpaid; Covered Absences; Amount of Leave; Eligibility; Notice (Employer/Employee) Requirements

DISCRIMINATION AND HARASSMENT CHECKLIST

Topic	Key Compliance Areas
Protected Characteristics/Activities	Beyond federal (e.g. sexual orientation, gender identity, CROWN Act / hairstyle protections, reproductive health decisions, credit history, familial status, veteran status, immigration status, weight/height, off-duty lawful conduct, political activity, union activity, whistleblower protections)
State harassment training and policy	Content, frequency, audience, instructor
Pay equity and equal pay requirements	State equal pay act requirements beyond the federal Equal Pay Act
Pregnancy and lactation accommodation requirements	State requirements exceeding federal law
Disability coverage and accommodation	Requirements beyond federal law
Age discrimination	State coverage for persons younger than 40 and other variations from federal law

Mandatory training (content, frequency, audience): CA, CT, DE, IL, ME, NY

EMPLOYEE PRIVACY AND DATA CHECKLIST



Surveillance and monitoring restrictions and notice requirements; video, audio, GPS



Social media privacy protections (including restrictions on requesting employee passwords; account access)



Employee data privacy laws (state consumer privacy laws with employee-data provisions)



Biometric data collection restrictions



NIL consent / name, image, likeness considerations



Personnel file access rights (inspect, copy, or rebut)

RESTRICTIVE COVENANTS CHECKLIST

Non-compete agreement bans and restrictions:

Scope, salary thresholds, notice requirements, garden-leave obligations

Non-solicitation agreement bans and restrictions:

Scope, salary thresholds, notice

Trade secret and confidential information protections:

Requirements for coverage, required carve-outs

NDA restrictions on employment and separation agreements and policies:

Prohibitions, required carve-outs

DRUG TESTING AND SUBSTANCE ABUSE CHECKLIST

Medical and recreational marijuana/cannabis employment protections	Drug testing requirements and restrictions	Alcohol testing restrictions
• Off-duty use • Positive-test protections	• Types • Notice requirements • Testing protocols	• Testing methods • Timing • Employer obligations

WORKPLACE SAFETY AND HEALTH CHECKLIST

- State OSHA plans and reporting requirements
- Workplace violence prevention programs
- Heat illness prevention standards
- Indoor air quality and smoking/vaping restrictions



LABOR RELATIONS CHECKLIST

State labor relations laws beyond the NLRA

Right-to-work, union security provisions

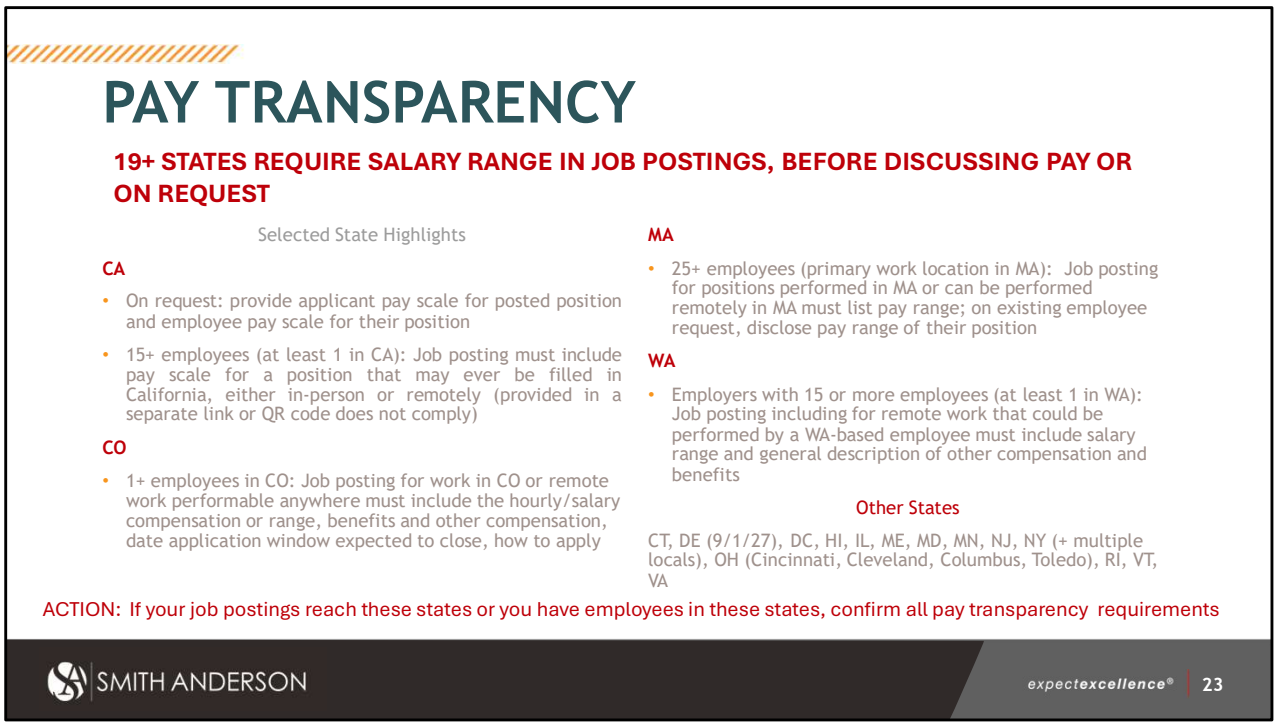
Captive audience meeting bans (states prohibiting mandatory employer meetings on union or political topics)

Public sector collective bargaining

TERMINATION AND SEPARATION CHECKLIST

- Exceptions to at-will employment (implied contract, oral contract, handbook liability, public policy, and reasonable-notice requirements)
- Termination notice and reporting requirements
- Final pay timing requirements (same day, next business day, or next regular payday)
- Mini-WARN / state plant-closing notification requirements (thresholds or longer notice periods than the federal WARN Act)
- Separation agreement requirements and limitations
- Unemployment insurance obligations

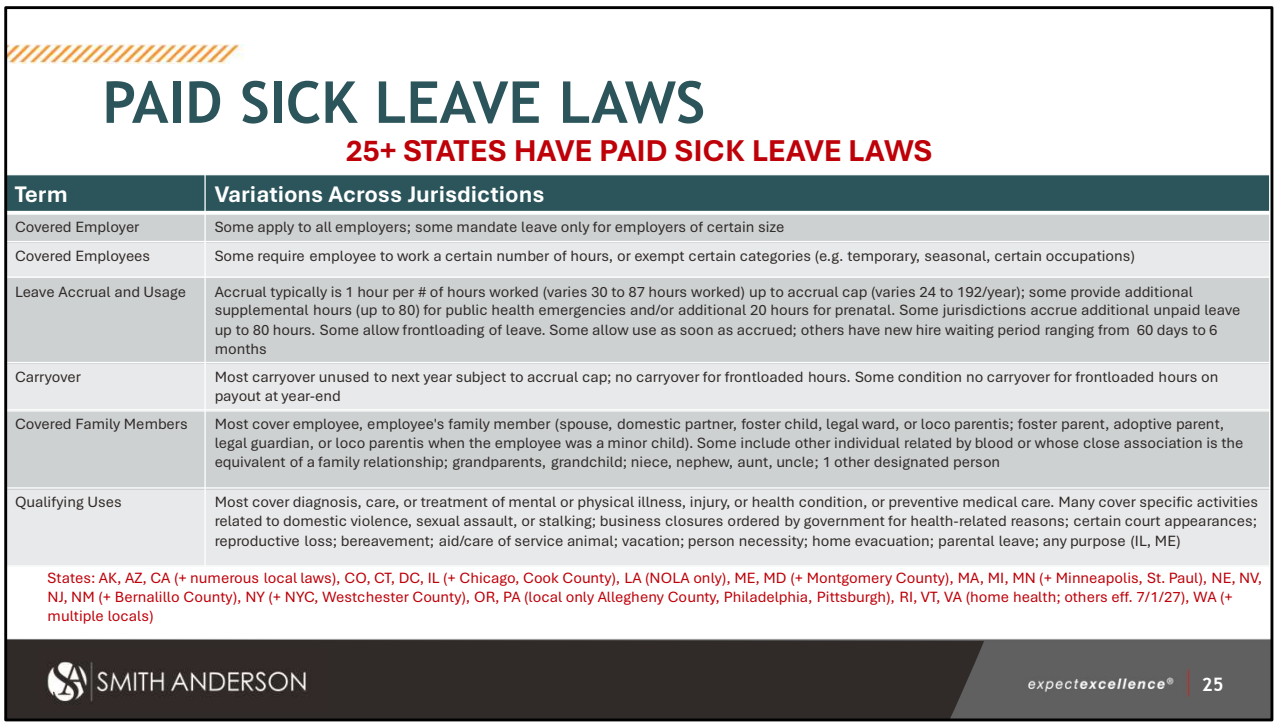
High Risk Compliance Topics



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Note

While Georgia does not have a paid sick leave law, it does have a law requiring that if the employer provides sick leave, up to 5 days of sick leave can be used for family care).

PAID FAMILY AND MEDICAL LEAVE LAWS

16+ STATES HAVE MANDATORY PAID FAMILY LEAVE

Term	Variation Across Jurisdictions
Covered Employers, Employees	Most cover all non-government employers. Employees generally must earn a certain minimum compensation or work a minimum number of hours to qualify for PFL.
Funding Source	Most are funded entirely by employee wage deductions; some require employer contribution or full employer funding.
Benefit Amount	Each state has different contribution levels, benefit levels (based on state minimum wage or average weekly wage rates or % employee salary), # weeks covered (6 – 26), eligibility rules (generally based on minimum pay or work hours), claims processes
Permitted Reasons	All cover birth or care for serious ill family member. Some states also cover leave related to prenatal care, domestic or sexual violence, organ or bone marrow donation,
Covered Family Members	Most cover employee's spouse, sibling, child, grandparent, grandchild and parent. Some also cover domestic partner, in-laws, other relatives, or others with a relationship equivalent to relative.
Notice and Posting	Most require certain notices and postings of employee rights.

States: CA, CO, CT, DE, DC, MA, ME, MN, NJ, NY, OR, RI, VA (eff. 12/1/2028), WA

ACTION: Determine whether contributions are made in the states where employees live/work, and payroll vendor is properly configured.

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Notes

MD (eff. 1/1/2027 contributions begin; 1/1/2028 leave benefits begin)

New Hampshire has a voluntary program

INDEPENDENT CONTRACTOR v. EMPLOYEE

8+ STATES HAVE MORE STRINGENT REQUIREMENTS FOR INDEPENDENT CONTRACTOR STATUS

Test	Requirements	States
ABC	IC must satisfy all 3 requirements: (A) free from control, (B) services outside the usual course of client business, and (C) services are customarily an independent trade	CA, MA, NJ
Hybrid	Right to Control: Client does not have control over how work is performed + Relative Nature of Work: Services outside the usual course of client business	CO, HI, IL, MT, NY
Common Law	Right to Control and multi-factor economic realities test	Most other states

Misclassification consequences include back pay, tax liability, benefits obligations, statutory penalties Class and collective action exposure and, in California, potential PAGA actions.

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The rules: There is no 1 rule that governs IC classification. Different federal and state laws have different rules. person can qualify as independent contractor under some laws, but not others.

Examples
Qualifies under federal tax law, but not under federal FLSA nor under CA state law
Qualifies under NC state law, but not under CA state law
Qualifies under NJ discrimination law, but not under NJ wage payment law

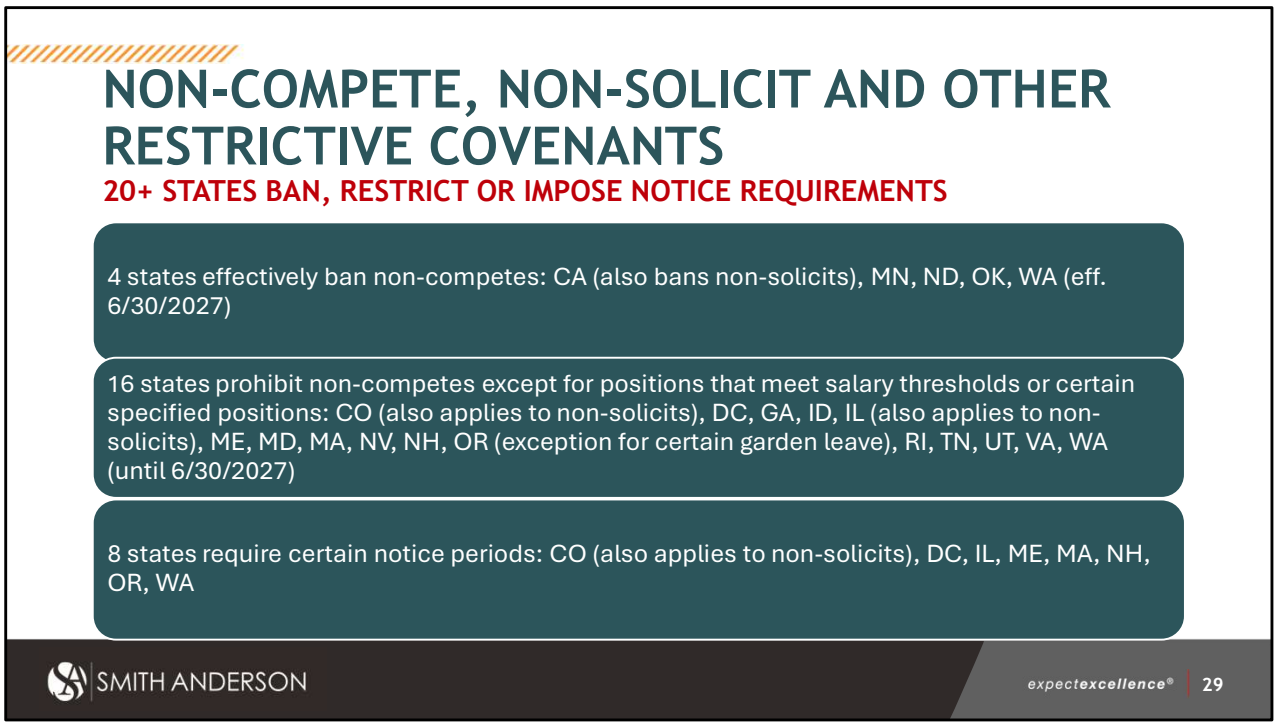
EMPLOYEE PRIVACY AND DATA

20+ STATES HAVE LAWS REGULATING THESE AREAS

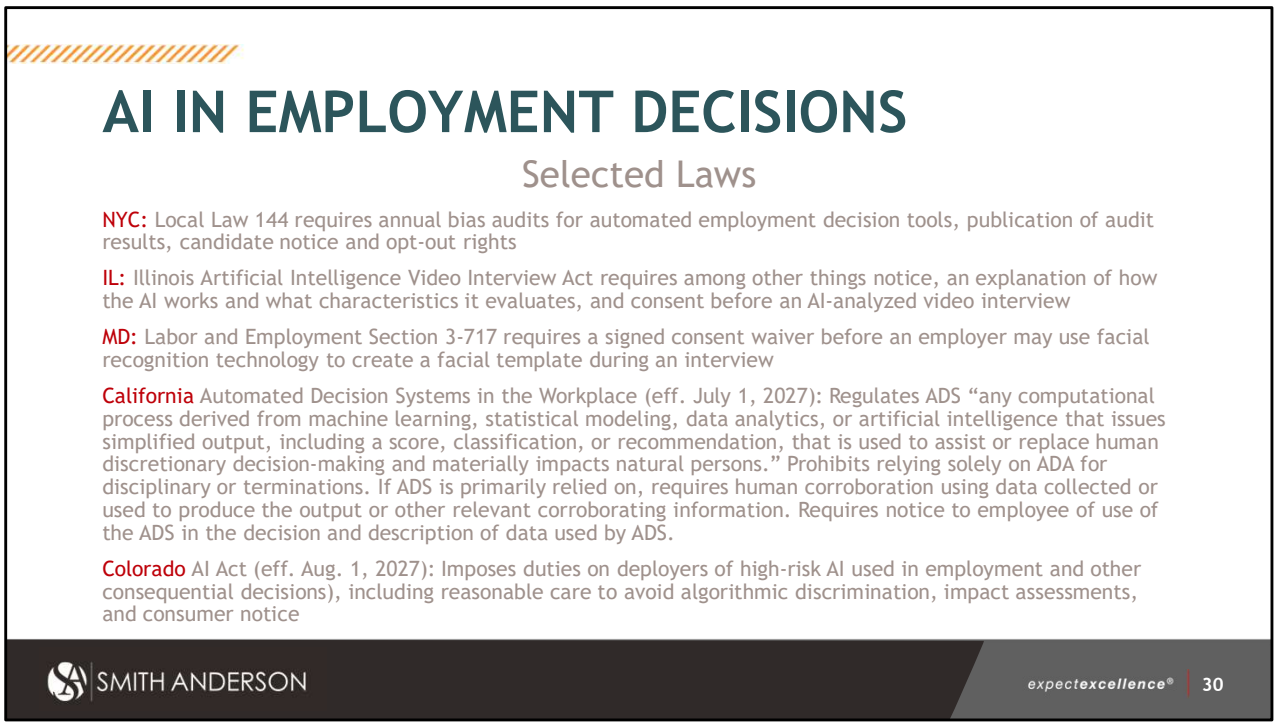
- 20 states have laws governing access to personnel records. Some give rights to copy and rebut the records. Some extend these rights to former employees. Some impose time deadlines for employer production of the records. AK, CA, CO, CT, DE, HI, IL, IA, KS, ME, MA, MN, NJ, OR, PA, RI, TN, TX, VA, WA, WI
- 12+ states have laws prohibiting or restricting, and/or requiring notice and/or consent for, various monitoring/surveillance, including location tracking, electronic monitoring of online activity or use of biometric data: CA, CO, CT, DE, HI,IL, KS, ME, NJ, OR, TN, TX
- 21 states have consumer data privacy laws: CA (no exemption for employee data), CO (applies only to employee biometric identifiers). Most states exempt employee data.



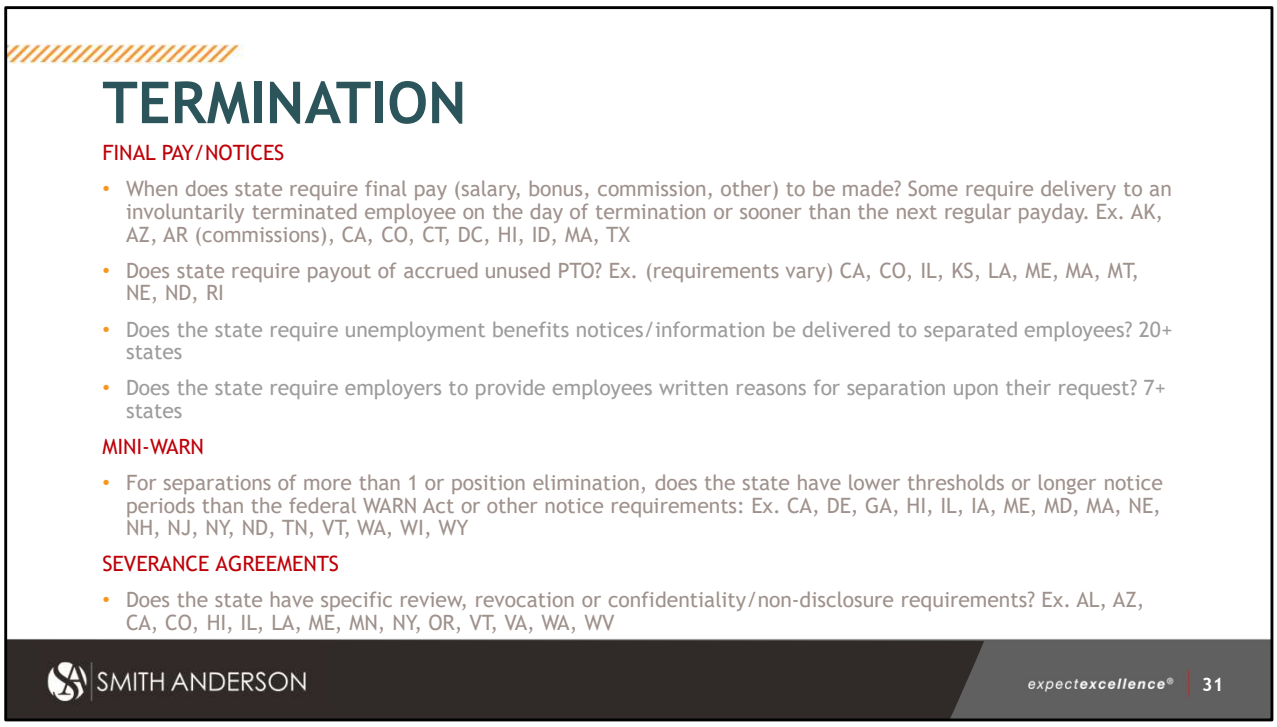
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ALL THINGS CONSIDERED-Regulatory Tiers

The Most Regulated States:

- California
- Colorado
- Illinois
- Maine
- Massachusetts
- Minnesota
- New Jersey
- New York
- Oregon
- Rhode Island
- Washington

Followed by:

- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Maryland
- Virginia

Beware the rest….*they have a few peculiarities that are gotchas*



Most uniform to most customized

OVERALL APPROACHES

Approach	Best Fit	Pros/Cons
State-by-State (each state has its own handbook/policies/agreements)	< 5 states	Most precise; highest administrative burden
Baseline Plus (main handbook/policies + state supplement for regulated deviations)	Works good for all	Scalable; administrative burden grows with geographic footprint
Tiered by Level of Regulation (Most, Next, Rest)	Multiple states in Most, Next and Rest	Can ease administrative burden; can't standardize some inherently state specific standards*
Highest Standard	Large 50-state employers/large "Most regulated" headcount	Simplest administrative burden; highest cost/may create contractual obligations in some states/loss of competitive flexibility/can't standardize some inherently state specific standards*

**Tax, payroll registration, PFML/state disability program contribution, workers comp, new hire reporting/disclosures, termination notices, state OSHA*

TOPICS SUITABLE FOR HIGHEST STANDARD IN STATE-BY-STATE OR BASELINE PLUS APPROACHES

- Pay transparency disclosures
- Pay history bans
- AI use in employment decisions
- Paid sick leave amounts
- Disability, pregnancy, lactation accommodation
- Surveillance, monitoring
- Social media privacy
- Biometric data collection

DECISIONS, TAKE-AWAYS, MOVING FORWARD

DECIDING ON APPROACH

- Assess geographic footprint
- Number of personnel in the state
- Assess level of regulation in footprint (Most, Next, Rest)
- Assess compliance resources

TAKE-AWAYS

- No one right approach—depends on footprint, census and level of regulation in the footprint
- Every approach requires monitoring for developments, especially in fast developing areas
- Treat the checklist as a living document with annual review

PRACTICAL NEXT STEPS

- Use the checklist to audit your policies, procedures and forms; identify gaps; prioritize remediation
- Select your approach
- Put together a monitoring plan and resources
- Remediate and roll-out


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Fifty Shades of a Compliance Plan:
When Employees are Here, There, and Everywhere
Kimberly J. Korando
Bella Thoren
October 28, 2026

APPENDIX A
MULTI-STATE EMPLOYER LEGAL CHECKLIST

Issue	State Law
I. TAX AND BUSINESS NEXUS/PAYROLL/STATE BENEFIT MANDATES	
State/local tax withholdings (income, unemployment, state benefit contributions such as disability and family leave)	
Remote work nexus considerations (business nexus created by employing remote workers in-state)	
State payroll registration requirements	
State-mandated retirement savings programs (auto-IRA programs in CA, CO, CT, IL, ME, MD, NJ, NY, OR, VA, and WA)	
State health insurance requirements and supplements	
Workers' compensation coverage requirements	
Group health plan coverage mandates	
State disability insurance programs	
II. HIRING AND ONBOARDING	
Job posting pay/benefits disclosure and pay transparency requirements (including salary-range disclosure laws)	
Salary history inquiry bans	
E-Verify requirements (varying by state and employer size or industry)	
New hire reporting requirements	
New hire disclosure requirements (wage rate, pay schedule, benefits, and written notices)	
Background check requirements and restrictions	
Criminal history restrictions / ban-the-box / fair chance hiring laws (timing of inquiries and expungement protections)	
State poster and notice requirements	
III. WAGE AND HOUR	
Minimum wage rates (state and local variations; many states above federal $7.25)	
Minimum exempt salary thresholds (state thresholds exceeding federal levels)	
Overtime requirements and exemptions (state-specific overtime rules)	
Fair Workweek / FWW restrictions (including reporting-time, scheduling, and related premium-pay rules)	
Meal break and rest break requirements	
Pay frequency requirements	
Pay statement / paystub disclosure requirements	
Wage deductions, forfeitures, and garnishment rules	
Business expense reimbursement requirements	
Prevailing wage requirements for public works	
Tip credit and tip pooling rules	
Commuter benefits requirements	
Fair Workweek / predictive scheduling laws (including Oregon statewide and local laws in NYC, Chicago, Philadelphia, San Francisco, Seattle, and Los Angeles)	
V. LEAVE LAWS	
Mandatory paid sick leave (including states such as AZ, CA, CO, CT, IL, MA, MD, ME, MI, MN, NJ, NM, NY, OR, RI, VT, and WA)	

APPENDIX A
MULTI-STATE EMPLOYER LEGAL CHECKLIST

Issue	State Law
Paid family and medical leave insurance programs (including CA, CO, CT, DE, MA, MD, ME, MN, NJ, NY, OR, RI, and WA)	
PTO carryover and forfeiture rules (use-it-or-lose-it versus mandatory carryover)	
PTO payout at termination requirements	
Mandatory leaves: military, CAP/Civil Air Patrol, victim/witness, court attendance, and crime victim leave	
Bereavement leave (including states such as IL, CA, OR, MD, and WA, among others)	
Organ and bone marrow donor leave	
Voting leave	
Jury duty leave (including pay requirements)	
Prenatal and pregnancy-related leave	
School activity leave	
Domestic violence / sexual assault victim leave	
Small necessities leave	
VI. ANTI-DISCRIMINATION, HARASSMENT, WHISTLEBLOWER, PROTECTED ACTIVITIES	
Non-federal protected characteristics (e.g., sexual orientation, gender identity, CROWN Act / hairstyle protections, reproductive health decisions, off-duty lawful conduct, credit history, familial status, veteran status, immigration status, and weight/height)	
State harassment training and policy requirements (including CA, CT, DE, IL, ME, and NY)	
Pay equity and equal pay requirements (state equal pay acts beyond the federal Equal Pay Act)	
Pregnancy and lactation accommodation requirements	
Disability accommodation beyond the ADA	
Age discrimination (state variations from the ADEA)	
State whistleblower protections	
Other protected activities (including off-duty lawful conduct, political activity, and union activity protections)	
Concerted activity protections beyond the NLRA	
VII. EMPLOYEE PRIVACY AND DATA	
Surveillance and monitoring restrictions	
Social media privacy protections (including restrictions on requesting employee passwords)	
Employee data privacy laws (state consumer privacy laws with employee-data provisions)	
Biometric data collection restrictions (including IL BIPA, TX, and WA)	
NIL consent / name, image, and likeness considerations	
Personnel file access rights (employee rights to inspect, copy, or rebut personnel records)	
Confidentiality mandatory carve-outs for permitted disclosures (including restrictions on NDAs covering harassment and discrimination)	
VIII. RESTRICTIVE COVENANTS AND TRADE SECRETS	
Non-compete agreement restrictions and bans (including CA, MN, ND, and OK; salary thresholds, notice requirements, and garden-leave obligations)	

APPENDIX A
MULTI-STATE EMPLOYER LEGAL CHECKLIST

Issue	State Law
Non-solicitation agreement restrictions	
Trade secret and confidential information protections	
NDA restrictions in employment and separation agreements (including state limits on confidentiality provisions, especially in harassment/discrimination contexts)	
IX. WORKPLACE SAFETY AND HEALTH	
State OSHA plans and reporting requirements	
Workplace violence prevention programs (including CA and other states)	
Heat illness prevention standards	
Indoor air quality and smoking/vaping restrictions	
X. DRUG TESTING AND SUBSTANCE USE	
Medical and recreational marijuana/cannabis employment protections (including off-duty use and positive-test protections)	
Drug testing requirements and restrictions (pre-employment, random, post-accident; state-specific variations)	
Alcohol testing restrictions	
XI. TECHNOLOGY AND AI IN EMPLOYMENT	
Use of artificial intelligence in hiring and employment decisions (including IL, CO, NYC, and other automated employment decision tool laws)	
Automated decision-making disclosure requirements	
Electronic monitoring notice requirements (including CT, DE, and NY)	
XII. TERMINATION AND SEPARATION	
Exceptions to at-will employment (implied contract, oral contract, handbook liability, public policy, and reasonable-notice requirements)	
Final pay timing requirements (same day, next business day, or next regular payday; varies significantly)	
Termination notice and reporting requirements; severance letter	
Mini-WARN / state plant-closing notification requirements (including lower thresholds or longer notice periods than the federal WARN Act)	
Separation agreement requirements and limitations	
Unemployment insurance obligations	
XIII. LABOR RELATIONS	
State labor relations laws beyond the NLRA	
Public sector collective bargaining	
Right-to-work and union security provisions	
Captive audience meeting bans (states prohibiting mandatory employer meetings on union or political topics)	

Ahead of the Curve: Navigating What's Next in Benefit Plan Compliance

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Ahead of the Curve:

Navigating What's Next in Benefit Plan Compliance

Kara Brunk
Employee Benefits & Executive Compensation
October 28, 2026

Ahead of the Curve

- The 2026 Landscape: Cross-Cutting Developments
- Health & Welfare Plans
- Retirement Plans
- Trump Account Contribution Programs
- Executive Compensation
- Proactive Compliance Strategies

Setting the Stage

- Where we stand – October 2026:
  - Most 2026 SECURE 2.0 and OBBBA changes are now in effect – generally since January 1, 2026 (Trump Account contributions since July 4, 2026). Roth catch-up: good-faith standard for 2026, final regs apply in 2027. SECURE 2.0 amendments due December 31, 2026.
  - CAA 2026 (February 2026) put PBM reforms on a 2028–2029 timeline
  - Regulatory priorities continue to shift – some rules paused, others newly proposed
- Litigation continues to fill gaps left by regulators
- Today: a practical compliance check-in – what has changed so far in 2026 and what is coming next

THE 2026 LANDSCAPE: CROSS-CUTTING DEVELOPMENTS

Legislative Drivers

- SECURE 2.0 Act (2022)
  - Roth catch-up requirement now in effect; additional provisions phase in during 2027 and beyond
  - Plan amendment deadline approaching: December 31, 2026, for most plans (later for collectively bargained and governmental plans)
- One Big Beautiful Bill Act (OBBBA) (July 4, 2025)
  - Now in effect: HSA expansions, higher dependent care FSA limit; Trump Account contributions permitted since July 4, 2026
  - Expanded Code Section 162(m) aggregation and Section 4960 coverage apply for 2026 tax years
- Practical Point: Confirm 2026 changes are implemented and calendar the 2027+ dates

Shifting Agency Priorities

- Department of Labor (EBSA)
  - 2024 mental health parity final rule – non-enforcement of new provisions announced May 2025
  - 2024 "Retirement Security Rule" (fiduciary rule) stayed by federal courts
  - 2021 supplemental statement cautioning on private equity in 401(k) plans rescinded (August 2025)
- Executive Order on alternative assets in 401(k) plans (August 2025)
  - Monitor DOL follow-up guidance on private markets, real estate, and digital assets
- Treasury/IRS
  - Final catch-up contribution regulations issued September 2025 – generally apply beginning 2027
  - 2026 SECURE 2.0 guidance: Notices 2026-9 (IRA/SEP/SIMPLE amendments), 2026-15 (updated 402(f) notice), 2026-33 (long-term care distributions), 2026-48 (Saver's Match), 2026-49 (rollovers); still pending: lump-sum window disclosure, blended benchmarks, EPCRS update

Take-Aways: Federal Guidance

- Paused or rescinded rules ≠ no rules – underlying statutes still apply
- Watch for proposed rules and safe harbors following the alternative assets Executive Order
- Document your reliance on guidance in effect at the time of each decision

Recurring Reporting Calendar

Requirement	Applies To	Timing
Prescription Drug Data Collection (RxDC)	Group health plans (via carriers / TPAs)	June 1 annually
Gag Clause Prohibition Attestation	Group health plans and insurers	December 31 annually
Form 5500 / 5500-SF	Most ERISA retirement and welfare plans	Last day of 7th month after plan year end (extension available)
Forms 1094-C / 1095-C	Applicable large employers	IRS filing: Feb. 28 (paper) / March 31 (electronic)
PCORI Fee (Form 720)	Self-insured health plans	July 31 annually

DOL & IRS Focus Areas

- Cybersecurity
  - DOL confirmed in 2024 that its cybersecurity guidance applies to all ERISA plans, including health and welfare plans
- Mental health parity
  - NQTL comparative analyses still required under the Consolidated Appropriations Act, 2021
- Missing participants and uncashed checks
- Timely deposit of participant contributions
- Late or incomplete plan amendments – SECURE 2.0 deadline is December 31, 2026

Litigation Trends to Watch

- **Forfeiture suits**: challenges to using forfeitures to offset employer contributions
- **Tobacco surcharge suits**: wellness program and notice deficiencies
- **Health plan fiduciary claims**: prescription drug pricing and vendor oversight
- **Pension risk transfer suits**: annuity provider selection
- **Voluntary benefits suits**: excessive broker commissions (Dec. 2025 class actions)
- **Prohibited transactions**: Cunningham v. Cornell (U.S. 2025) – plaintiffs need only plausibly allege a § 406(a)(1)(C) transaction; § 408 exemptions are affirmative defenses fiduciaries must plead and prove. Courts continue to require facts beyond a mere conflict to support disloyalty claims.

Take-Aways: Enforcement

- Enforcement now comes from regulators AND plaintiffs' firms
- A documented, prudent process remains the best defense
- Review plan documents for forfeiture language, wellness surcharges, and vendor contracts now
- Document the basis for relying on any § 408 exemption (e.g., reasonable compensation) – after Cunningham, fiduciaries bear that burden

HEALTH AND WELFARE PLANS

ACA Reporting Relief

- Paperwork Burden Reduction Act and Employer Reporting Improvement Act (December 2024) – now in effect
  - Forms 1095-B/1095-C may be furnished upon request, if timely and clearly noticed
  - Electronic furnishing permitted with consent; date of birth may substitute for missing TINs
  - Employers have 90 days to respond to Letter 226-J (ESRP assessments)
  - Six-year statute of limitations on employer shared responsibility penalties
- Action item: confirm the upon-request notice process used in 2026 and prepare for early 2027 filings

OBBBA H&W: Now in Effect

- Health Savings Accounts
  - Permanent safe harbor for pre-deductible telehealth coverage (retroactive to plan years beginning after December 31, 2024)
  - Bronze and catastrophic Marketplace plans treated as HSA-compatible (effective 2026)
  - Direct primary care arrangements permitted alongside HSAs if fees do not exceed $150/month ($300 for family coverage, indexed); fees are HSA-qualified expenses
- Dependent care assistance: annual exclusion increased to $7,500 – in effect for 2026 (not indexed)
- Educational assistance: $5,250 student loan repayment exclusion made permanent; indexed for tax years beginning after 2026

Ongoing Health Plan Compliance

- Transparency in Coverage and No Surprises Act obligations remain in effect
- Mental health parity: maintain NQTL comparative analyses on demand
- Pharmacy benefit oversight
  - Fiduciary duties regarding PBM contracts (see CAA 2026)
  - Cost pressures from specialty drugs, including GLP-1s
- Wellness programs: confirm reasonable alternative standards and required notices

PROPOSED RULE – NOT YET FINAL

Proposed E-Disclosure Rule

- DOL proposed rule published July 23, 2026 (RIN 1210-AC35)
- New, optional "notice-and-access" safe harbor for group health plans (29 CFR 2520.104b-32)
  - Modeled on the 2020 safe harbor for pension plans
  - Electronic delivery becomes the default; paper available on request
- Existing 2002 safe harbor remains available
- Comment period closed September 21, 2026
- If finalized, applies the first day of the calendar year after the final rule is published

PROPOSED RULE – NOT YET FINAL

Proposed Rule – Coverage

- **Covered plans:** ERISA group health plans only – not other welfare plans (e.g., disability, life)
- **Covered individuals:** those who provide an email address or smartphone number
  - Employer-assigned work email treated as provided
  - Dependent children age 18+ who provide their own address
- **Covered documents:** any document required under Title I of ERISA
  - E.g., SPDs, SMMs, SARs, COBRA notices, SBCs, claims notices
  - Includes documents furnished only on request
- No direct-email delivery option (privacy / PHI concerns)

PROPOSED RULE – NOT YET FINAL

Proposed Rule – Requirements

- **Initial notification:** on paper before relying on the safe harbor (electronic OK for those already receiving e-delivery under the 2002 safe harbor)
- **Notice of Internet Availability (NOIA):** for each document or an annual combined notice, with prescribed content
- **Website standards:** posted by the ERISA deadline; kept at least 1 year or until superseded; readable, searchable, printable; confidential
- **Participant rights:** free paper copies and global opt-out
- **Invalid addresses:** system must flag; cure promptly or switch to paper
- HIPAA privacy obligations still apply

EFFECTIVE 2028–2029 · PENDING GUIDANCE

CAA 2026: PBM Reform at a Glance

- Signed into law February 3, 2026
- PBM compensation now governed by federal statutory standards – not just contract negotiation
- Key provisions for ERISA group health plans:
  - PBMs and brokers treated as "covered service providers" under ERISA § 408(b)(2)
  - 100% pass-through of rebates and other remuneration
  - Semiannual PBM reporting to plans; annual participant notice
  - Civil penalties; limited "innocent fiduciary" exception
- No new employer plan design or cost-sharing mandates identified – most health provisions target Medicare

EFFECTIVE 2028–2029 · PENDING GUIDANCE

Rebate Pass-Through & Oversight

- **ERISA § 408(b)(2) expansion**: covered service providers include PBMs and brokers/consultants for plan design, insurance selection (incl. dental and vision), stop-loss, PBM, and more
- **Rebate pass-through**: 100% of rebates, fees, and discounts remitted to the plan
  - Bona fide, transparent, fixed service fees permitted
  - Quarterly remittance within 90 days after quarter end
- **Audit rights**: rebate records auditable at least annually; auditor chosen by fiduciary, not paid by PBM
- Fiduciary duty to monitor PBM compensation is not relieved
- PBM arrangements through insurers or TPAs are treated as an indirect furnishing of services between the plan and the PBM as a party in interest – prohibited transaction rules reach the PBM even without a direct contract

EFFECTIVE 2028–2029 · PENDING GUIDANCE

New PBM Reporting Requirements

- PBM reports every 6 months (quarterly on request), plain language and machine-readable
- Large plans (100+ participants or employees) receive drug-level detail:
  - Plan-paid vs. pharmacy-paid amounts (spread pricing)
  - Gross and net spending; rebates retained and passed through
  - Formulary placement rationale for high-cost drugs; affiliated pharmacies
- All plans: summary documents; broker/consultant compensation tied to PBM selection
- Plans must give participants annual written notice and summary data on request
- HIPAA privacy limits apply; DOL format rules due within 18 months

EFFECTIVE 2028–2029 · PENDING GUIDANCE

CAA 2026: Penalties & Relief

- **Penalties**: $10,000 per day for failures to report or disclose; up to $100,000 per item of knowingly false information
- Prohibited transaction exposure if PBM compensation is unreasonable or undisclosed
- Innocent fiduciary exception – fiduciary must:
  - Not know of the PBM's failure to remit
  - Reasonably believe the PBM would comply
  - Demand remittance in writing after discovery
  - Notify DOL if the PBM does not comply within 90 days
- General ERISA prudence and monitoring duties still apply

CAA 2026: Key Dates

Date	Development
February 3, 2026 (passed)	Enactment; expanded § 408(b)(2) covered service provider definition presumably in effect for new or renewed contracts (no stated effective date)
By August 3, 2027	DOL rules on report format and implementation due (18 months after enactment)
August 3, 2028	Rebate, reporting, and innocent fiduciary provisions apply to contracts entered into or renewed for plan years beginning on or after this date
January 1, 2029	First applicable plan year for calendar-year plans

Action Items: CAA 2026

- Should already be doing:
  - Requesting § 408(b)(2) compensation disclosures from PBMs and brokers/consultants on contracts entered into or renewed since February 3, 2026
- Still to do:
  - Build full rebate pass-through, reporting, audit rights, and reconciliation into PBM renewals now (typical 3-year terms)
  - Add PBM report review to fiduciary committee calendars; retain disclosures and audit work papers
  - Prepare participant notice and summary data processes
  - Monitor DOL rules (due by August 2027) and the overlapping proposed PBM transparency rule

Voluntary Benefits Under Scrutiny

- December 23, 2025: four class actions filed by Schlichter Bogard
  - CHS / Gallagher; Labcorp / WTW; United Airlines / Mercer; Allied Universal / Mercer and Lockton
  - Accident, critical illness, hospital indemnity, and similar employee-paid coverage
- First major test of ERISA fiduciary standards for voluntary benefits – watch for rulings on ERISA status
- Theories borrowed from 401(k) excessive fee litigation:
  - Imprudent carrier and broker selection; no RFP or benchmarking
  - Excessive broker commissions and loss ratios
  - Brokers as functional fiduciaries; self-dealing and prohibited transactions

Is It an ERISA Plan?

- DOL voluntary plan safe harbor (29 C.F.R. § 2510.3-1(j)) requires all four:
  - No employer contributions
  - Completely voluntary participation
  - Employer limited to ministerial functions – no "endorsement"
  - No employer consideration beyond reasonable payroll-deduction cost reimbursement
- Endorsement risk factors cited in complaints:
  - Employer logos on materials; exclusive reminders; extra broker services
  - Form 5500 filings treating the program as an ERISA plan
- Fail one element → ERISA fiduciary and prohibited transaction rules apply

Action Items: Voluntary Benefits

- Reassess ERISA status of each voluntary offering against the safe harbor
- **Vendor oversight**: map all direct and indirect broker and carrier compensation; benchmark commissions and loss ratios
- Adopt a repeatable RFP and monitoring cadence for carriers and brokers
- Review plan documents, communications, and Form 5500 reporting for consistency
- Train committee members on fiduciary duties for welfare plans – including voluntary benefits
- CAA 2026 expanded ERISA § 408(b)(2): brokers and consultants providing insurance-product selection services (including vision and dental) are covered service providers – request compensation disclosures for ERISA-covered voluntary programs

Action Items: Health & Welfare

- Should already have done:
  - Implemented the $7,500 dependent care limit (if elected) and amended the cafeteria plan
  - Updated HSA eligibility communications for 2026
- Still to do:
  - Request NQTL analyses and data from carriers/TPAs
  - Audit PBM contracts for audit rights and data access
  - Monitor finalization of the proposed e-disclosure rule before changing any delivery practices
  - Review fringe programs for other OBBBA changes: § 45S paid leave credit now permanent (new insurance-premium method); bicycle commuting exclusion eliminated; moving expense exclusion permanently disallowed

RETIREMENT PLANS

Retirement Plan Disclosures

- SECURE 2.0 paper statement requirement – now in effect (plan years beginning in 2026)
  - DC plans: at least one paper benefit statement each year (unless participant elects e-delivery)
  - DB plans: paper statement at least once every three years
  - Exceptions: statements furnished under the 2002 e-delivery safe harbor, or participants who request electronic delivery
  - DOL proposed regulations (February 2026) – final rules pending; temporary enforcement policy in Field Assistance Bulletin 2026-02
- Retirement Savings Lost and Found database (launched December 2024)
  - Coordinate missing participant data with recordkeepers
- Disclosures are increasingly used as evidence in fiduciary claims

Roth Catch-ups – Final Regulations

- Roth requirement (SECURE 2.0 Sec. 603) in effect since January 1, 2026 – 2026 is the first applicable year
  - 2024 and 2025 were an IRS administrative transition period (Notice 2023-62)
  - Good faith compliance standard applies for 2026; final regs generally apply beginning January 1, 2027
- Catch-ups must be Roth for employees with prior-year FICA wages above $150,000 for 2026 ($145,000 statutory amount, indexed)
  - Plans without a Roth feature cannot offer catch-ups to high earners
- Age 60–63 "super" catch-up available since 2025 (optional)

Roth Catch-up Corrections

- Final regs provide two correction methods when a high earner's catch-up is mistakenly made pre-tax:
  - Form W-2 Correction Method
  - In-Plan Roth Rollover Method
- Conditions: plan sponsor/administrator must have practices and procedures in place before the failure (relying on a timely filed Form W-2 to identify high earners is permitted); same method for similarly situated participants; method choice may not turn on investment returns.
- Failures not corrected under these methods fall back to EPCRS – note the EPCRS revenue procedure has not yet been updated for SECURE 2.0's expanded self-correction

Roth Catch-up Correction Methods

	Form W-2 Correction Method	In-Plan Roth Rollover Method
Mechanics	Transfer the pre-tax catch-up (adjusted for earnings) to the Roth account	Directly roll the pre-tax catch-up (plus earnings) to the Roth account
Tax Reporting	Report as a Roth contribution on the Form W-2 for the year of deferral	Report on Form 1099-R for the year of the rollover
Availability	Only if the Form W-2 for that year has not been filed or furnished	Available after the Form W-2 is filed and furnished
Deadline: § 401(a)(30) / § 402(g) excess	Only before W-2 is filed/furnished. Qualification deadline: last day of taxable year after deferral year – but finish by April 15 to avoid § 402(g) excess-deferral tax treatment	Qualification deadline: last day of taxable year after deferral year. If not done by April 15, § 1.402(g)-1(e)(8) excess-deferral tax rules apply
Deadline: § 415(c) excess	Only before W-2 is filed/furnished; last day of taxable year after deferral year (no April 15 overlay)	Last day of taxable year after deferral year (no April 15 overlay)
Deadline: employer-limit excess	Only before W-2 is filed/furnished; last day of plan year after deferral year. Counts as a catch-up for ADP testing until corrected	Last day of plan year after deferral year. Counts as a catch-up for ADP testing until corrected
Deadline: ADP-limit excess	Last day of plan year after deferral year; if ADP fixed first, excess must be distributed; 10% excise tax if not fixed in 2½ months (6 for EACAs)	Same as Form W-2 method

Take-Aways: Roth Corrections

- Should already have done: implemented Roth catch-up payroll coding effective January 1, 2026
- Still to do before year-end:
  - Audit 2026 catch-ups for high earners now
  - Correct 2026 errors now – use the Form W-2 method before 2026 Forms W-2 are filed or furnished, and calendar April 15, 2027 for any excess deferrals over the § 401(a)(30) limit
  - Otherwise use the in-plan Roth rollover method by the applicable deadline, or EPCRS
- Review recordkeeper and payroll processes now to avoid correction issues
  - Confirm FICA wage data feeds, the indexed threshold, and deemed Roth procedures before 2027, when final regs generally apply

SECURE 2.0 Milestones – In Effect

- In effect: mandatory automatic enrollment for new 401(k)/403(b) plans (plan years beginning after 2024) (exceptions: plans established before December 29, 2022; employers with 10 or fewer employees; new businesses under 3 years; church and governmental plans)
- In effect: long-term part-time employees – two consecutive years of 500+ hours (2025) – employees with 500+ hours in both 2025 and 2026 become eligible in 2027

SECURE 2.0 Milestones – Upcoming

- Upcoming: Saver's Match begins with 2027 contributions (federal match up to $1,000, claimed on 2027 returns filed in 2028) – plans are not required to accept it; decide whether and how to participate (IRS Notice 2026-48)
- Upcoming: plan amendment deadline December 31, 2026 for most plans (Notice 2024-2) – collectively bargained plans: December 31, 2028; governmental plans: December 31, 2029; IRAs, SEPs, and SIMPLE IRAs: December 31, 2027 (Notice 2026-9)
  - Operational compliance should already match intended amendments
  - Document decisions now, operate consistently with SECURE 2.0, and confirm recordkeeper readiness – even if formal amendments come later
- Upcoming: first responder service-related disability payments after retirement age excluded from income (taxable years beginning after December 31, 2026)
- Update 402(f) rollover notices to reflect Notice 2026-15

Investment & Fiduciary Issues

- Alternative assets in DC plans
  - Monitor DOL guidance following the August 2025 Executive Order
  - Fiduciary process (fees, liquidity, valuation) remains critical
- Forfeiture use
  - Confirm plan terms clearly permit chosen uses and timing
- Pension risk transfer
  - Follow Interpretive Bulletin 95-1 (subject to DOL review under SECURE 2.0 § 321) and document annuity provider selection

TRUMP ACCOUNT CONTRIBUTION PROGRAMS

OBBBA: Trump Accounts – Overview

- Trump Accounts (Code §§ 128, 530A): employer contributions up to $2,500 per employee (indexed after 2027) excluded from income – only under a separate written 'Trump account contribution program' for the exclusive benefit of employees meeting § 129(d)-type requirements. Contributions do not reduce other IRA limits before the child turns 18.
- Contributions permitted since July 4, 2026
- Guidance: Notice 2025-68; proposed §§ 128/129 regs (Aug. 2026); § 530A temporary regs (Sept. 30, 2026) – Treasury auto accounts established on or about October 1, 2026; $1,000 pilot contribution for children born 2025–2028

OBBBA: Trump Accounts – Employer Programs

- Proposed §§ 128/129 regs (Aug. 2026): no contributions to Treasury 'auto accounts' (verify accounts through trustee or payroll data); subject to FICA/FUTA, reported in Form W-2 Box 12, code TA; $2,500 limit is per employee, not per dependent; no trustee restrictions; salary reduction only for dependents' accounts; 55% average benefits test – failures make HCE contributions taxable
- Action item: decide whether to offer Trump Account contributions – if so, adopt a separate written program meeting § 128(c) requirements before the first contribution. DOL Technical Release 2026-02: programs generally are not ERISA plans if the employer stays neutral (no trustee or investment selection, no discretion over assets, not marketed as a retirement plan).

EXECUTIVE COMPENSATION

Tax Developments

- Section 162(m)
  - Now in effect: OBBBA aggregates compensation from all controlled group members for 'specified covered employees' (PEO, PFO, 3 highest paid, prior covered employees) – taxable years beginning after 2025; largely codifies existing regs
  - Upcoming: ARPA's five additional highest-paid employees, determined across the controlled group (taxable years beginning after 2026)
- Section 4960 (tax-exempt employers)
  - Now in effect: covered employees include all current and former employees with service after 2016 – excise tax (21%) on compensation over $1 million to any of them; significant for large tax-exempts such as universities

Action Items: Executive Comp

- Should already have done:
  - Re-modeled 2026 162(m) deduction limits with controlled group aggregation
  - Tax-exempt employers: identified newly covered 4960 employees for 2026
- Still to do:
  - Prepare for the 2027 ARPA expansion of 162(m) covered employees

PROACTIVE COMPLIANCE STRATEGIES

Building a Compliance Framework

- Governance
  - Charter committees, schedule regular meetings, and keep minutes
- Calendar
  - Maintain a master compliance calendar for reporting, notices, and amendments
- Vendor management
  - Review service agreements, SOC reports, and cybersecurity practices
- Self-audit
  - Periodically test operations against plan documents; use EPCRS and VFCP to correct (watch for the updated EPCRS revenue procedure)

Key Dates: Now & Next

Status	Date	Development
Recently Effective	January 1, 2026	Roth catch-ups; OBBBA DCAP/HSA; 162(m) and 4960
Recently Effective	February 3, 2026	CAA 2026 enacted; § 408(b)(2) expansion presumably in effect
Recently Effective	July 4, 2026	Trump Account contributions permitted
Recently Effective	October 1, 2026	Treasury begins establishing Trump 'auto accounts' (cannot receive § 128 employer contributions)
Coming Soon	December 31, 2026	SECURE 2.0 amendment deadline
Coming Soon	January 1, 2027	Final catch-up regs; Saver's Match; 162(m) expansion
Coming Soon	December 31, 2027	SECURE 2.0 amendments for IRAs, SEPs, SIMPLE IRAs (Notice 2026-9)
Coming Soon	By August 3, 2027	DOL CAA 2026 PBM reporting rules due
Coming Soon	August 3, 2028	CAA 2026 PBM reforms (Jan. 1, 2029 for calendar-year plans)

Key Takeaways

- 2026 changes are now in effect – confirm implementation and correct errors
- Next up: year-end amendments, 2027 Roth regs and Saver's Match, 2028–2029 PBM reforms
- Paused rules do not mean paused risk
- A prudent, documented process is your best defense

Questions?


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Ahead of the Curve:
Navigating What's Next in Benefit Plan Compliance
Kara Brunk
Employee Benefits & Executive Compensation
October 28, 2026
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Diversity, Equity, and Inclusion (DEI) Under the Microscope: Reevaluating Your Programs in the Executive Order Era

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Diversity, Equity, and Inclusion (DEI) Under the Microscope

Reevaluating Your Programs in the Executive-Order Era

Taylor M. Dewberry
Tamika L. Henderson
October 28, 2026

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Overview

- 2025 Executive Orders
- 2026 Executive Order
- Corporate Updates
- Reverse Discrimination Litigation and Cases
- Practical Takeaways

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SFFA – Background Context

- **Students for Fair Admissions (SFFA) (June 2023):** Supreme Court struck down race-conscious admissions; sparked broader DEI scrutiny
  - SFFA was expressly limited to race-conscious admissions at higher education institutions under the Equal Protection Clause
  - Executive Orders ("EOs") invoke SFFA as authority for the proposition that DEI programs may constitute illegal discrimination
    - EO 14173 directs AG and Education Secretary to issue guidance on SFFA compliance for educational institutions
    - The Trump Administration has consistently argued in litigation that SFFA supports a broad prohibition on race-based preferences in any context, not merely higher education admissions
  - Justice Barrett suggested at oral argument that affinity housing may reduce isolation—hinting she may view post-admission questions differently

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2025 Executive Orders

- Post-inauguration, President Trump issued a series of EOs addressing Diversity, Equity and Inclusion ("DEI") and Diversity, Equity, Inclusion and Accessibility ("DEIA") in employment
- These EOs (and resulting agency actions) do not target all DEI/DEIA programs
  - Focus is on eliminating "illegal" DEI/DEIA and federal contractor affirmative action requirements for women and minorities

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2025 Executive Orders

- **EO 14151 (Government DEI Order) — Ending Radical and Wasteful Government DEI Programs and Preferencing** (Jan. 20, 2025): Directed agencies to terminate federal DEI/DEIA offices, positions, equity action plans, and 'equity-related' grants and contracts
- **EO 14173 (Merit-Based Opportunity Order) — Ending Illegal Discrimination and Restoring Merit-Based Opportunity** (Jan. 21, 2025): Revoked EO 11246 (Affirmative Action Order), required anti-DEI certifications in federal contracts and grants, and directed enforcement against private-sector DEI practices
- **EO 14185 (Military DEI Order) — Restoring America's Fighting Force** (Jan. 27, 2025): Directed the abolishment of all DEI offices in the Department of Defense and Coast Guard and banned promotion of "divisive concepts" in military institutions
- **EO 14281 (Disparate Impact Order) — Restoring Equality of Opportunity and Meritocracy** (Apr. 23, 2025): Declared a policy to eliminate disparate-impact liability to the maximum extent possible
- **EO 14319 (Woke AI Order) — Preventing Woke AI in the Federal Government** (Jul. 23, 2025): Required agencies to procure only LLMs that are truth-seeking and ideologically neutral, with no intentionally encoded DEI or other partisan judgments

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2025 Executive Orders

- Following the initial set of EOs, several federal agencies put out statements, letters and other guidance materials addressing the Trump Administration’s directives

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2025 Executive Orders – Agency Action

- **Government DEI Order (EO 14151)**
  - **Feb. 5, 2025** – Office of Personnel Management ("OPM") issued a memo "Further Guidance Regarding Ending DEIA Offices, Programs, and Initiatives"
    - Diverse slate programs
    - Employment practices where protected class was considered

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2025 Executive Orders – Agency Action

- **Disparate Impact Order (EO 14281)**
  - Internal EEOC memorandum stated the EEOC would close almost all pending charges based solely on allegations of disparate impact by September 30, 2025
  - **June 4, 2026** – the EEOC approved a new National Enforcement Plan that prioritizes intentional discrimination over disparate impact claims
    - Includes the near elimination of disparate impact enforcement

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2025 Executive Orders – Agency Action

- **Disparate Impact Order (EO 14281)**
  - **June 9, 2026** – the Department of Justice's Office of Legal Counsel ("OLC") issued an opinion to the EEOC that its guidelines about disparate-impact under Title VII are unconstitutional
    - This was a response to a question from EEOC Chair Andrea Lucas asking whether Title VII's disparate impact provisions are constitutional as the EEOC interprets and applies them
    - The DOJ stated its opinion "helps implement Executive Order 14281"
    - Her response afterwards was thanking the DOJ for its thoughtful and insightful analysis

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2025 Executive Orders – Agency Action

- **Woke AI Order (EO 14319)**
  - **December 11, 2025** – The Office of Management and Budget published memo guidance
    - Federal agencies must ensure that any solicitation or order for procurement of an LLM they issue includes contractual requirements addressing compliance with Unbiased AI Principles
    - Modify existing contracts for LLMs to include that requirement (to the extent possible)
    - By **March 11, 2026**, federal agencies must update their policies and procedures to ensure that contracts for procurement of LLMs include contractual requirements addressing compliance with the Unbiased AI Principles

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2025 Executive Orders – Agency Action

- **Merit-Based Opportunity Order (EO 14173)**
  - **March 19, 2025** – EEOC and DOJ released technical assistance documents on DEI-related workplace discrimination
    - "What to Do If You Experience Discrimination Related to DEI at Work" – employee guidance
    - "What You Should Know About DEI-Related Discrimination at Work" – overview of Title VII protections
  - **March 21, 2025** – Attorney General guidance about implementing both the Government DEI Order (EO 14151) and the Merit-Based Opportunity Order (EO 14173)
    - Direct or indirect/neutral preferences based on protected class are impermissible

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2025 Executive Orders – Agency Action

- **Merit-Based Opportunity Order (EO 14173)**
  - **May 19, 2025** – DOJ announced the Civil Rights Fraud Initiative
    - Uses the False Claims Act ("FCA") to pursue federal funding recipients that knowingly violate civil rights laws and falsely certify compliance
      - For example, a contractor may be liable under the FCA for knowingly and falsely certifying compliance with the law where the certification is material to the government's decision to pay
    - Implements the Merit-Based Opportunity Order, which requires contractors and grantees to certify compliance with federal antidiscrimination law and directed the AG to recommend civil rights enforcement measures

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2025 Executive Orders – Agency Action

- **Merit-Based Opportunity Order (EO 14173)**
  - **June 27, 2025** – OFCCP invited federal contractors to voluntarily submit information about their efforts to wind down affirmative action programs
  - **July 1, 2025** – DOL proposed rescinding the Affirmative Action Order (EO 11246) implementing regulations
  - **June 4, 2026** – the EEOC approved a new National Enforcement Plan that prioritizes challenging broad-based employment policies, programs or practices that result in intentional discrimination including DEI or similar euphemisms

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- **July 1, 2025 – DOL proposed rulemaking**
  - Rescind the Affirmative Action Order (EO 11246) implementing regulations
  - Removes Affirmative Action Order components from administrative enforcement procedures
  - Incorporates enforcement procedures directly into the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA") and Section 503 of the Rehabilitation Act ("Section 503") regulations through separate rulemakings
  - **DOL's stated rationale:**
    - The Merit-Based Opportunity Order (EO 14173) revoked the Affirmative Action Order (EO 11246), so its regulations must go
    - Independently, DOL found the affirmative action rules legally vulnerable
    - Formal rescission avoids confusion over regulations DOL considers null and void

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- After a period of notice and comment, the DOL issued three final rules that take the following actions:
  1. Narrows Requirements for Section 503
  2. Provides Technical Updates to VEVRAA
  3. Rescinds the Affirmative Action Order's Implementing Regulations

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- **Narrows Requirements for Section 503** (eff. Sept. 21, 2026)
  - Eliminates the requirement to invite applicants and employees to self-identify as an individual with a disability, keep the related data, or measure their workforce against the required 7% utilization goal
    - DOL found the self-ID and utilization-goal requirements inconsistent with the ADA, and that the goal could push contractors toward quotas
    - Applicants and employees can still disclose their disability on their own initiative at any point in the hiring or employment process (for example, to request a reasonable accommodation)

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- **Narrows Requirements for Section 503** (cont.)
  - Eliminates the utilization goals and analysis
  - Eliminates the disability applicant and hire data requirements (§ 60-741.44(k))
  - Eliminates Affirmative Action Order cross-references
    - The administrative hearing procedures now sit directly in the Section 503 rules instead of being borrowed from Part 60-30
    - Part 60-30 is removed effective Dec. 21, 2026, after the procedures move into the Section 503 and VEVRAA rules
  - Raises the basic coverage threshold from $15,000 to $20,000 to reflect inflation

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- **What hasn't changed about Section 503?**
  - Contractors with 50+ employees and a $50,000+ contract must maintain a written Section 503 AAP and continue outreach and positive recruitment efforts
  - Disability nondiscrimination, reasonable accommodation, and affirmative action duties to employ and advance qualified individuals with disabilities remain
  - Options that do not require disability-status data:
    - Skills-Based Barrier Analysis: remove nonessential requirements (e.g., lifting or driving)
    - Outreach: share vacancies and job fairs with disability employment groups
    - Accessible Hiring: support assistive technology in applications and assessments
    - Accommodations: share clear accommodation information and request procedures with all applicants and employees

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- **Technical Updates to VEVRAA (eff. Sept. 21, 2026)**
  - Mostly minor technical changes to VEVRAA (no new obligations)
  - Eliminates Affirmative Action Order cross-references
  - Relocates administrative enforcement (formerly contained in the Affirmative Action Order's regulations)
  - Removes the unnecessary Section 503 reference (29 U.S.C. 793) from the authority citation
  - Codifies an inflation adjustment raising the VEVRAA threshold (including the AAP trigger for 50+ employees) from $150,000 to $200,000
  - **Compare to 503 Changes:** unlike Section 503, contractors must still invite applicants and new hires to self-identify veteran status and keep the related applicant/hire data

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- **Rescinding the Affirmative Action Order's Regulations** (effective October 26, 2026)
  - Removes and reserves 41 CFR parts 60-1, 60-2, 60-3, 60-4, 60-20, 60-40, 60-50, and 60-999, and strips Affirmative Action Order components from part 60-30
  - Formally, at the regulatory level, ends ~60 years of government-mandated affirmative action for women and minorities
  - Functionally, makes sure that there are no implementing regulations for an EO that no longer exists
  - DOL concluded the race-based AA rules are unconstitutional, the sex-based rules likely are, and both conflict with Title VII

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Merit-Based Opportunity Order (EO 14173) – Related Rulemaking

- **Practical Takeaways**
  - Race-and-sex-based affirmative action is formally over
  - Stop using the disability self-ID process and remove the utilization goal and analysis from the plan
  - Keep the veteran self-ID process
  - Update your documents and keep an eye on the effective dates of the changes (some of which are already in place)
    - Key dates:
      - September 21, 2026: Section 503 and VEVRAA changes take effect
      - October 26, 2026: EO 11246 regulations rescinded
      - December 21, 2026: Part 60-30 removed

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2026 Executive Order

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Contractor DEI Order (EO 14398)

- On March 26, 2026, the President signed the Contractor DEI Order (EO 14398) about DEI in federal contracting
  - Builds upon the Merit-Based Opportunity Order's requirements (which required federal contractors to certify they do not operate programs promoting DEI in violation of the law)
  - Defines terms
  - Requires the inclusion of certain language in federal contracts and contract-like instruments
    - The required clause flows down to subcontractors at every tier
  - Discusses sanctions/penalties for non-compliance

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Contractor DEI Order (EO 14398)

- Defined terms:
  - **Racially discriminatory DEI activities** means "disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources"
  - **Program participation** means "membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor"

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Contractor DEI Order (EO 14398)

"In connection with the performance of work under this contract, [the contractor/appropriate party (contractor)] agrees as follows:

1. *The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors);*
2. *The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause;*

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Contractor DEI Order (EO 14398)

Provisions 1 and 2 in Practical Terms:

1. Turns the definition into a binding contract term (the definition could address practices not already clearly prohibited by existing anti-discrimination laws)
2. Creates a broad duty to share records that may not already be required under existing law

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Contractor DEI Order (EO 14398)

3. In the event of the contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts;
4. The contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency;

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Contractor DEI Order (EO 14398)

Provisions 3 and 4 in Practical Terms:

3. Failure to comply may lead to termination and debarment from future contracts
4. Requires the contractor to conduct some level of due diligence that their subs are also in compliance with the requirements

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Contractor DEI Order (EO 14398)

5. The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of this clause; and
6. The contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act)."

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Contractor DEI Order (EO 14398)

Provisions 5 and 6 in Practical Terms:

5. Must notify the agency if a subcontractor sues the contractor and challenges the clause's validity
6. Acknowledges that failure to comply creates potential False Claims Act Liability

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Corporate Updates

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Failure to Accommodate Religious beliefs:

- Pre-litigation settlement regarding Generac Power Systems. EEOC accused the Wisconsin company of failing to accommodate the religious beliefs of an employee who asked to be exempt from using a transgender worker's pronouns
- Employee's request was denied without first engaging in an accommodation process. EE said by using pronouns aligned with gender identity went against his religious beliefs
- EEOC has rolled back transgender bias enforcement, and the Commission has rescinded anti-harassment guidance that said misgendering workers or denying them access to workplace facilities matching their gender identity is a form of discrimination. **Remember some states and local laws still treat intentional misgendering as harassment**
- As part of settlement agreement, company agreed to update its religious accommodation policies and provide related training. There was also an undisclosed monetary payment to the EE who had resigned when his accommodation was denied
- Impact: The key lesson is about process, not outcome. Generac's exposure came from denying the request without any dialogue. Employers should keep enforcing respectful-workplace standards, and they should also explore reasonable alternatives with employees who raise religious objections, such as using names instead of pronouns. They should also document that process

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EEOC Rescinds Guidance and Shifts Enforcement Priorities: What It Means for Employers

- Rescinded old guidance on affirmative action plans
- *Enforcement plan rejects disparate impact liability as an enforcement theory*
- *Increased scrutiny of job ads and recruiting practices that target or encourage specific groups to apply*
- Moves to end the annual EEO-1 report, which requires large employers to submit workforce data by race, ethnicity, sex, and job category
- Impact: Title VII protects workers exactly as it did before. What has changed is the EEOC's own guidance and enforcement priorities. Employers should make sure no policy or practice uses a protected characteristic as a selection criterion, and review any program with diversity-related criteria

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English-Only Rules Still Carry Legal Risk

- The EEOC announced plans to rescind its 1980 national origin guidelines, which warned employers that English-only policies and citizenship requirements can violate Title VII.
- Despite shifting priorities for EEOC, the exceptions for English-only and citizenship policies remain narrow
- The 1980 guidelines treated English-at-all-times rules as presumptively discriminatory. Courts are still likely to find these rules unlawful if there is no business justification
- The priority shift and announced rescission do not change Title VII or existing case law
- **Impact:** Employers should not read the rescission as permission to adopt broad English-only or citizenship rules. Any English-only rule should be limited to specific situations, such as safety, customer communication, or supervision, and supported by a documented business reason. Private plaintiffs and state agencies can still challenge these policies, so employers should review existing rules now

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Anti-DEI Litigation & Training Challenges

- DEI Training Case Law:
  - **Chislett v. NYC DOE** (2d Cir. 2025): Second Circuit held a reasonable jury could find implicit bias training created hostile work environment based on how the training was conducted – but clarified trainings are not "per se racist"
  - **Young v. Colo. DOC** (10th Cir. 2026): Court held a single training with disclaimers was not sufficient for a hostile work environment claim
  - **Key Takeaway:** Not all DEI training constitutes unlawful hostile work environment, but outcomes depend heavily on the facts, circumstances, and impact of the training

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EEOC Subpoena Enforcement Actions

- **EEOC v. NIKE, Inc. (E.D. Mo., filed Feb. 4, 2026): Subpoena Enforcement**
- **No employee complaint:** The investigation started with a Commissioner's charge that Chair Lucas filed herself in May 2024, alleging discrimination against white employees
- **Built from Nike's own words:** The charge relied on information Nike had made public:
  - Its mentorship and diversity programs
  - Data showing more minorities in leadership roles
  - Its stated goal of 35% racial and ethnic minority representation in the corporate workforce by 2025
- **What the EEOC subpoenaed:** Data going back to 2018 on:
  - Hiring, promotion, demotion, and layoff criteria
  - Use of race and ethnicity data in executive compensation
  - 16 programs that allegedly offered race-restricted opportunities, including participant names and eligibility criteria
- **Nike pushed back:** It called the charge "impermissibly vague and overbroad" and called the court filing "a surprising and unusual escalation"
- **Outcome:** Nike produced the documents between March and August 2026. The EEOC then moved to dismiss, saying "no remaining controversy" was left
  - The EEOC said it was "pleased the company complied without a court order"

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From Guidance to Litigation: The EEOC's 2026 Playbook

The EEOC's National Enforcement Plan makes DEI-related discrimination its #1 priority. It may investigate without a charge, and rebranded programs are still covered

- **What it does:** The new plan replaces the agency's prior strategic plan and names "remedying DEI-related race and sex discrimination" as the EEOC's top enforcement priority
- **No complaint needed:** The EEOC says it may investigate DEI programs proactively, even when no individual has filed a charge
- **Practices it flags:** job ads seeking "diverse candidates"; "aspirational goals" treated as stand-ins for quotas; diverse slate policies; required diversity statements; executive pay tied to diversity goals; and sharing demographic data with managers outside HR

***EEOC v. Washington Univ.*:** A race-segregated DEI training session leads to discrimination and retaliation claims.

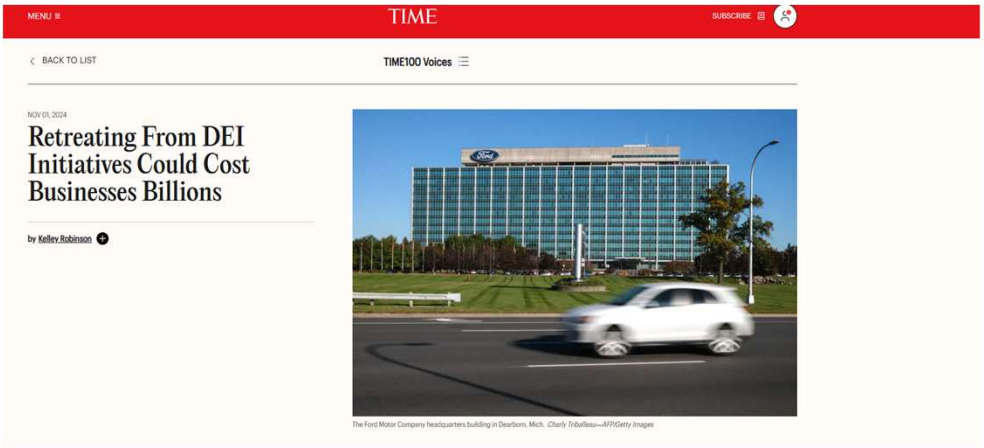
- The charging party is a Black employee. She alleges a mandatory anti-racism training put staff into Zoom breakout rooms separated by race, leaving her as the only BIPOC participant. She says she was later terminated after complaining to the EEOC
- **Takeaway:** Segregated DEI programming creates risk no matter which group is affected. The EEOC's guidance treats separating employees by race in training as prohibited even when every group gets the same content

DOJ Civil Rights Fraud Initiative

- **What it is:** The DOJ is using the False Claims Act against federal contractors who "falsely" certify compliance with civil rights laws. It has said DEI policies may be treated as violations
- **Why it matters:** False Claims Act exposure adds the risk of treble damages on top of ordinary Title VII liability

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The Cost of Full Retreat



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Costs of retreat: Target's experience

An Overview of Target's DEI Rollback:

- In January 2025, Target ended several of its most visible DEI initiatives, including its REACH (Racial Equity Action and Change) strategy and participation in the Human Rights Campaign's Corporate Equality Index (Stern, 2025)
- The company also rebranded its Supplier Diversity program to "Supplier Engagement" and removed many DEI-focused goals from its website (Davis, 2025)
- Target stated that the move was a response to "an evolving external landscape"—a phrase interpreted by many as pressure from political actors and conservative shareholder groups

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Costs of retreat: Target's experience

What Target said	What headlines said
Target said it remains focused on "creating a sense of belonging for our team, guests and communities through a commitment to inclusion."	CNBC: "Target rolls back DEI initiatives, the latest big company to retreat."
Target said it was "concluding our three-year diversity, equity and inclusion goals."	AP/MPR: "Target is ending its diversity goals as a strong DEI opponent occupies the White House."
Target said it was "concluding our Racial Equity Action and Change (REACH) initiatives in 2025 as planned." It later said it fulfilled its $2 billion Black-owned business commitment in early 2026.	One advocacy report said Target "terminated its $2 billion" REACH initiative, "effectively dismantling" support for minority-owned suppliers.
Target said it was renaming "Supplier Diversity" to "Supplier Engagement" to "better reflect our inclusive global procurement process."	A law review article said the Supplier Diversity division "was rebranded" as part of a "sunset of its DEI infrastructure."
Target said it was "stopping all external diversity-focused surveys, including HRC's Corporate Equality Index". It said its employee resource groups would "continue to be open to all."	CNN reported that Target was "eliminating hiring goals for minority employees" and "ending an executive committee focused on racial justice."
Target gave its reason as "staying in step with the evolving external landscape."	Coverage tied the timing to the new administration: "days into the Trump presidency."

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Costs of retreat: Target's experience

- **Consumer Boycotts:** The January 2025 rollback led to a national boycott, protesters gathered outside Target's Minneapolis headquarters. Twin Cities Pride Festival cut ties with Target
- Shareholder Lawsuit: City of Riviera Beach Police Pension Fund filed a class action lawsuit alleging that Target misled investors by failing to disclose the potential risks of scaling back its DEI programs
- **Market Value:** Investopedia reports that Target's stock fell 33% after the DEI rollback, wiping out more than $20 billion in shareholder value by mid-September 2025
- Reputational Harm: Store traffic fell by nearly 10% in Q1, and Target experienced increased employee turnover
- Target reportedly cut about 1,800 corporate jobs in late 2025, citing market pressures and reputational damage from the boycott. Organizers said in March 2026 that the boycott, which began in February 2025, was still going
- **Target's own acknowledgment:** In May 2025, coverage reported that Target admitted the DEI rollback and the boycotts contributed to its sales decline

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Pulling Back Didn't End the Legal Risk. It Added Consumer and Reputational Costs

- **Talent Attraction:**
  - 77% of Gen Z and 63% of Millennial workers say DEI plays a major role in where they decide to work
- **Retention:**
  - Retreating from DEI puts current employees at risk.
  - 76% of employees say they are more likely to stay long-term if their employer keeps supporting DEI
  - 43% say they would quit if their employer stopped supporting it
- **Credibility in Recruitment:**
  - Candidates check whether employers act on their stated values
  - Most Gen Z and Millennial workers will turn down assignments or employers that conflict with their ethics
  - Their loyalty is much higher when employers act on that feedback
  - Quiet rollbacks, or DEI that is only for show, risk mistrust and disengagement

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The Costco Contrast: Holding Steady

- **The Decision (January 2025)**
  - Costco's board recommended rejecting an anti-DEI shareholder proposal, saying its efforts "enhance our capacity to attract and retain employees who will help our business succeed"
  - More than 98% of shareholders voted against the proposal
- **The Framing**
  - The board said: "We believe that our diversity, equity and inclusion efforts are legally appropriate, and nothing in the proposal demonstrates otherwise"
  - Board chair Tony E. Curtis said its inclusion commitment "does not and has never included quotas or systematic preferences, nor does it mean compromising merit"
- **The Consumer Response**
  - **Numerator data:** Costco had nearly 7.7 million more visits year over year in the four weeks ending February 9, 2025. Target had nearly 5 million fewer
  - **Placer.ai data:** Costco's traffic rose 2.2% in February and 7.5% in March
  - **Who shifted:** Shoppers who said DEI was important to them drove most of the shift. Hispanic/Latino households accounted for more than one-third of Costco's gains
- **The Legal Pressure**
  - On January 27, 2025, 19 state attorneys general sent Costco a letter demanding that it either repeal its DEI policies or explain itself within 30 days

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Reverse Discrimination



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Ames v. Ohio Dep't of Youth Servs. (June 2025)

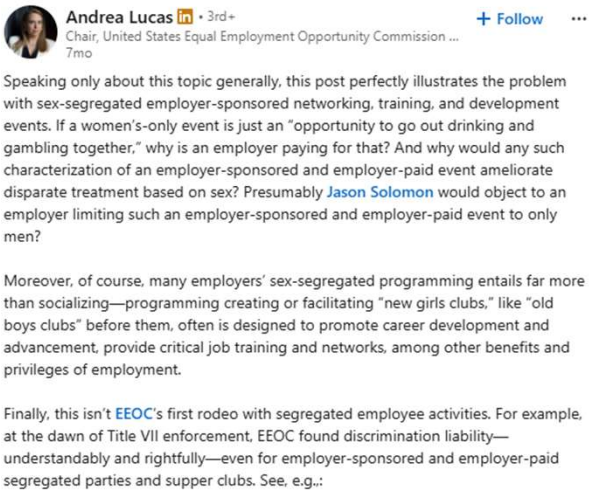
- Supreme Court struck down Sixth Circuit's "background circumstances" rules which required a plaintiff who is a member of a majority group to show background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority
- The Court rejected heightened evidentiary standard for members of majority group to satisfy a prima facie case of discrimination
- 4th Circuit never required a heightened evidentiary standard for majority groups
- EEOC filed an amicus brief noting to Court that there is no such thing as reverse discrimination-only discrimination and "background circumstances" test has no basis in Title VII text
- Likely courts will no longer apply inference that no discrimination occurred were plaintiff and alleged discriminator belong to same protected class. *See, e.g.,Elrod v. Sears, Roebuck and Co.*,939 F.2d 1466, 1471 (11th Cir. 1991)(stating that "it is difficult for a plaintiff to establish discrimination when allegedly discriminatory **decision-makers** are within the **same protected class** as the plaintiff"); *see also Orgain v. Salisbury,* 305 Fed. App'x 90, 103 (4th Cir. 2008)

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What about the Men?

- EEOC v. Coca-Cola Beverages Northeast, D.N.H. No. 1:26-cv-00115
- EEOC alleges that a women's retreat discriminated against men
- EEOC claims that Coca-Cola's bottler discriminated against male workers by only inviting women to an "employer-sponsored trip and networking event
- This test the "some harm" standard articulated by the Supreme Court in Muldrow v. City of St. Louis in 2024
- Justice Kavanaugh in a concurrence in Muldrow suggested that any worker transferred based on a protected category should "easily be able to show some additional harm," including through "perks" and "networking opportunities"
- EEOC argues this women's only retreat gave women an opportunity to network with the C-Suite
- The action is part of Chair Lucas' announced efforts to stop the threat of discrimination against white men posed by race and gender focused programs

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Speaking only about this topic generally, this post perfectly illustrates the problem with sex-segregated employer-sponsored networking, training, and development events. If a women's-only event is just an "opportunity to go out drinking and gambling together," why is an employer paying for that? And why would any such characterization of an employer-sponsored and employer-paid event ameliorate disparate treatment based on sex? Presumably Jason Solomon would object to an employer limiting such an employer-sponsored and employer-paid event to only men?

Moreover, of course, many employers' sex-segregated programming entails far more than socializing—programming creating or facilitating "new girls clubs," like "old boys clubs" before them, often is designed to promote career development and advancement, provide critical job training and networks, among other benefits and privileges of employment.

Finally, this isn't EEOC's first rodeo with segregated employee activities. For example, at the dawn of Title VII enforcement, EEOC found discrimination liability—understandably and rightfully—even for employer-sponsored and employer-paid segregated parties and supper clubs. See, e.g.,:

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EEOC Outreach and Warning

- **December 2025:** EEOC Chair Lucas posted a video asking, "Are you a white male who has experienced discrimination at work based on your race or sex? You may have a claim to recover money under federal civil rights laws"
- **February 2026:** The EEOC sent warning letters to the 500 largest U.S. companies

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EEOC v. The New York Times Co., S.D.N.Y No. 1:26-cv-03704 (May 2026)

- **The claim:** The EEOC alleges the Times passed over a white male editor for a Deputy Real Estate Editor promotion because of his race and/or sex
- **The theory:** The EEOC contends the Times's "race and sex-based representation goals influenced the decision"
  - The complaint cites the Times's 2021 "Call to Action" diversity goals, its tracking of those goals by department, and internal Slack messages about diversity hiring
- **Why it matters:** EEOC leadership says this is the agency's first lawsuit in a decade brought on behalf of a white male complainant

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Practical Takeaways

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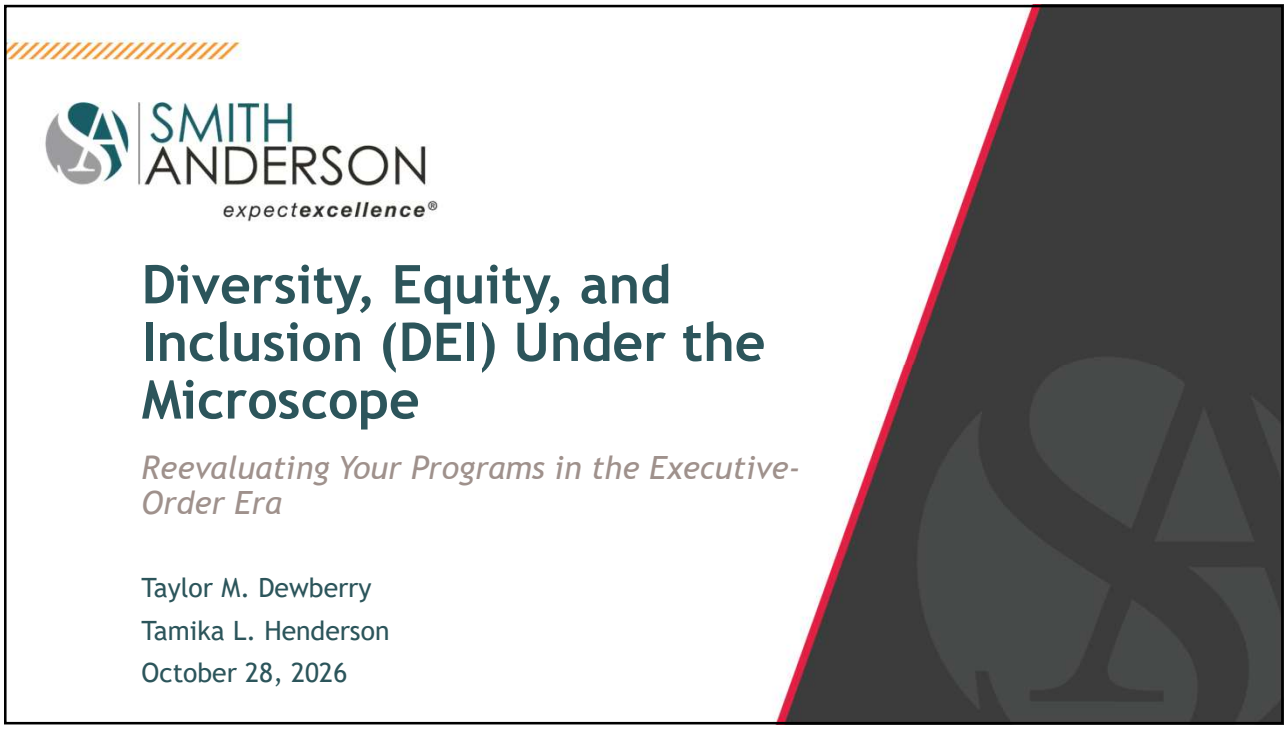
Remember:

1. **Diversity and inclusion are not illegal**
   - Title VII prohibits employment actions motivated, in whole or in part, by race, sex, or another protected characteristic. It does not prohibit inclusion itself
   - Employers can still support D&I lawfully through programs that are open to all, such as mentoring, outreach, and broad recruiting
2. **Programs limited by protected class carry the most risk**
   - The risk is highest where a program affects terms and conditions of employment: hiring, promotion, compensation, training, mentoring, sponsorship, or candidate slates
   - Groups and trainings restricted to, or separated by, protected class are a target, even when every group receives identical content
   - *Ames* and the EEOC's Coca-Cola retreat case show that majority-group plaintiffs face no higher bar, and that "perks" and networking access can count as harm

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Remember:

3. **The government is watching**
   - The EEOC and DOJ are actively collecting publicly available information about diversity practices. Increase in subpoena enforcement actions
   - In February 2026, the EEOC sent letters directly to CEOs, general counsels, and board chairs reminding them of their Title VII obligations related to DEI
4. **Review training for both content and delivery**
   - Training is not unlawful per se, but outcomes turn on how it is conducted and the impact it has
5. **Language matters, both internally and externally**
   - How you describe your efforts affects your legal exposure, as with diversity "targets" or metrics tied to compensation
   - It also affects trust. Quiet rollbacks, or DEI that is only for show, can lead to mistrust and disengagement
6. **Don't swap one risk for another**
   - Fully retreating doesn't eliminate legal risk, and it can add talent, consumer, and reputational costs
   - The goal is to revise programs to make them lawful, not to abandon them


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Diversity, Equity, and Inclusion (DEI) Under the Microscope
Reevaluating Your Programs in the Executive-Order Era
Taylor M. Dewberry
Tamika L. Henderson
October 28, 2026

EEO Update

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October 28, 2026

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EEOC DEVELOPMENTS

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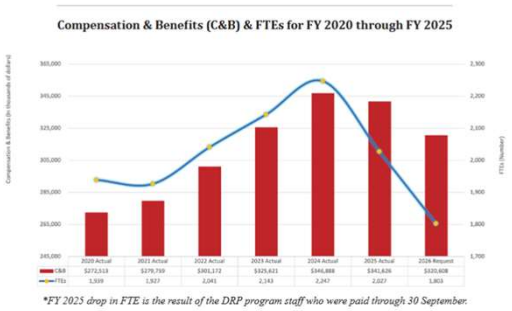
View from the Top

- Trump appointee Andrea Lucas remains chair
- Trump appointee Brittany Panuccio added late 2025
  - 2016 law school grad, worked on Title IX changes at DOE
  - Gives EEOC quorum for pattern/practice cases and issuing (or rescinding) regulations
- Priorities
  - Religion (Task Force to Eradicate Anti-Christian Bias)
  - DEI as discrimination
  - Anti-American discrimination
  - Women-only bathrooms (exited at least 7 trans lawsuits)
  - Universities

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By the Numbers

- Fewer employees
- Some dismissals without position statements
- Few cases filed
  - FY26: 97
  - FY23: 144
  - Pre-2010: 100s
- BUT: shorter deadlines



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By the Numbers: FY 2025

- Oct. 1, 2024 – Sept. 30, 2025 (crosses administrations)
- 270,000 inquiries (up 9%)
- 88,000 charges (steady)
- 90,000 resolutions (up 4%)
- Private sector "inventory" down 4%
- $660 million for 17,700 individuals
  - 80% pre-suit (conciliation, mediation, admin. settlements)
- Southeast is busy: 7/10 highest states per capita, inc. NC

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By the Numbers: Charge Bases

- Retaliation remains most common basis
- Disability edging up
- Religion peaked with COVID
- Pregnant Workers Fairness Act took effect 2023

	FY 2023	FY 2024	FY 2025
Retaliation (All Statutes)	57%	48%	62%
Disability	36%	38%	41%
Race	34%	34%	33%
Sex	31%	30%	31%
Age	17%	18%	19%
National Origin	9%	9%	9%
Religion	5%	4%	4%
Pregnancy	0.2%	3%	4%
Equal Pay Act	1%	1%	1%
Genetic Info.	0.4%	0.4%	0.5%
TOTAL	81,055	88,531	88,201

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By the Numbers: Resolutions

- Remarkably steady since 2000
- About 80% end in "no reasonable cause" or admin. closure
- Adverse conclusions are rare

	FY 2023	FY 2024	FY 2025
TOTAL	81,180	87,219	90,744
Settlement	9%	8%	8%
Withdrawn w/ Benefits	7%	8%	7%
Administrative Closure	19%	18%	19%
No Reasonable Cause	62%	64%	63%
Reasonable Cause	2%	2%	3%
Successful Conciliation	1%	1%	1%
Unsuccessful Conciliation	1%	1%	2%
Merit Resolution	1%	1%	2%
Monetary Benefits (millions)	$342.1	$440.5	$469.6

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Abandoning Affirmative Action

- Requirement for EEO demographic reports since 1966
  - 2-1 vote in July to rescind EEO reporting requirement, arguing it encourages anti-white and anti-male discrimination
  - No final rule yet, so TBD for this year
  - May still get requests from EEOC
- Affirmative Action Guidelines gave safe harbor since 1979 for programs to expand opportunity for under-represented groups
  - 2-1 vote in June to rescind guidelines & compliance manual
  - Title VII has not changed, but current government enforcement has

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"~~Reverse~~" Discrimination

Recall: *Ames v. Ohio Dept of Youth Services* (SCOTUS 2025)

- Unanimous opinion by Biden appointee Justice Ketanji Brown Jackson
- Straight woman sued after new position went to lesbian woman
- Appeals court required majority-group members to show defendant was "that unusual employer who discriminates against the majority"
  - Standard in 5 of the 12 regional circuits, but never our Fourth Circuit
- SCOTUS: Nope. Title VII standard "does not vary based on whether or not the plaintiff is a member of a majority group."

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E.g., *EEOC v. New York Times*

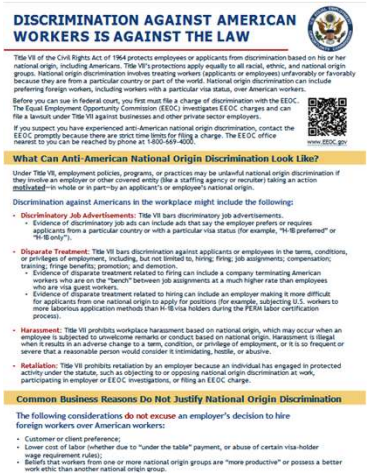
- May 2026: EEOC sues alleging race and/or sex discrimination
  - A white male editor was not selected for deputy real estate editor
  - 4 finalists with one white person and one male, but no white men
  - Cited NYT's 2021 "Call to Action" hiring plan, D&I reports with stats, diverse slates for candidates and interviewers, D&I in leader reviews
  - Editor: NYT leaders went from 83% white to 68% white in a decade
- NYT counter-suit: baseless retaliation for NYT's speech, part of administration-wide effort to punish perceived enemies
  - Also, selected multiracial woman was more qualified due to service journalism, compelling vision, deputy editor experience

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Anti-American Discrimination?

New educational EEOC poster in late 2025: "Discrimination Against American Workers"

- "preferring foreign workers, including workers with a particular visa status, over American workers"
- Job postings for a particular country or visa status ("H-1B preferred")
- Disparate treatment (firing more Americans who are "on the bench" between assignments than visa workers)
- Harassment
- Retaliation



DISCRIMINATION AGAINST AMERICAN WORKERS IS AGAINST THE LAW

Title VII of the Civil Rights Act of 1964 protects employees or applicants from discrimination based on his or her national origin, including Americans. Title VII's protections apply equally to all racial, ethnic, and national origin groups. National origin discrimination involves treating workers (applicants or employees) unfavorably or favorably because they are from a particular country or part of the world. National origin discrimination can include preferring foreign workers, including workers with a particular visa status, over American workers.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The Equal Employment Opportunity Commission (EEOC) investigates EEOC charges and can file a lawsuit under Title VII against businesses and other private sector employers.

If you suspect you have experienced anti-American national origin discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000.

www.EEOC.gov

What Can Anti-American National Origin Discrimination Look Like?

Under Title VII, employment policies, programs, or practices may be unlawful national origin discrimination if they involve an employer or other covered entity (like a staffing agency or recruiter) taking an action motivated—in whole or in part—by an applicant's or employee's national origin.

Discrimination against Americans in the workplace might include the following:

- **Discriminatory Job Advertisements:** Title VII bars discriminatory job advertisements.
  - Evidence of discriminatory job ads can include ads that say the employer prefers or requires applicants from a particular country or with a particular visa status (for example, "H-1B preferred" or "H-1B only").
- **Disparate Treatment:** Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including, but not limited to, hiring; firing; job assignments; compensation; training; fringe benefits; promotion; and demotion.
  - Evidence of disparate treatment related to firing can include a company terminating American workers who are on the "bench" between job assignments at a much higher rate than employees who are visa guest workers.
  - Evidence of disparate treatment related to hiring can include an employer making it more difficult for applicants from one national origin to apply for positions (for example, subjecting U.S. workers to more laborious application methods than H-1B visa holders during the PERM labor certification process).
- **Harassment:** Title VII prohibits workplace harassment based on national origin, which may occur when an employee is subjected to unwelcome remarks or conduct based on national origin. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive.
- **Retaliation:** Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing national origin discrimination at work, participating in employer or EEOC investigations, or filing an EEOC charge.

Common Business Reasons Do Not Justify National Origin Discrimination

The following considerations do not excuse an employer's decision to hire foreign workers over American workers:

- Customer or client preference;
- Lower cost of labor (whether due to "under the table" payment, or abuse of certain visa-holder wage requirement rules);
- Beliefs that workers from one or more national origin groups are "more productive" or possess a better work ethic than another national origin group.

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Anti-American Discrimination, cont'd

- Furniture store chain paying $1.3M for allegedly favoring Hispanic applicants
- Farm paying $150k for allegedly giving more and better work to foreign workers than U.S workers (mostly Black)
- EEOC sued IT staffing agency for "ONLY H-1B" job posting
- EEOC sued Asian supermarket chain for allegedly favoring Chinese workers in pay, promotions, scheduling, discipline
- EEOC sued janitorial service that allegedly "excluded qualified American and non-Hispanic applicants from janitorial jobs"
- EEOC sued construction group for allegedly firing U.S.-born Hispanic carpenter who complained about "anti-American slurs [from] Mexican coworkers" who "derided him because he could not speak Spanish fluently" (harassment, retaliation)

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Religion & Accommodation

- Recall: *Groff v. DeJoy* (SCOTUS 2023)
  - Unanimous opinion by Justice Samuel Alito
  - Lower courts long followed 1977 SCOTUS decision suggesting Title VII had a higher standard for religious accommodations
  - U.S. Postal Service mailman would not work Sundays due to Sabbath; disciplined for missing scheduled Sundays until he quit
  - District court and appeals court sided with employer
  - SCOTUS: Forget the 1977 decision and accommodate religion-based requests unless they impose undue hardship, i.e., "substantial increased costs in relation to the conduct of [a] particular business"

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Religion & Accommodation in Action

- EEOC secured over $1 million each from several employers who allegedly failed to provide religious exemptions to COVID vaccine requirements, including healthcare employers who had federal mandate upheld in court
  - Another employer paid $180k to end investigation of flu vaccine mandate
- Manufacturer settled after allegedly failing to accommodate a religious employee regarding pronouns for transgender colleague
- Las Vegas casino paid $850k and entered consent decree with monitor for allegedly denying Sabbath days off and retaliation for opposition
- Ski park paid $20k after allegedly firing Christian employee due to religious posts on personal social media
- EEOC sued Blue Bell ice cream maker for allegedly firing Jewish employee who refused to shave his beard
- Café chain paying $23k after allegedly firing fasting Muslim employee for seeking shift swap to accommodate sunset fast-breaking meal

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CASE DEVELOPMENTS

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Supreme Court

- No EEO cases
- Few employment law cases
- *Jules v. Andre Balazs Properties*
  - Does a federal court that previously stayed litigation to require arbitration have jurisdiction to confirm or vacate an arbitration award?
  - Yes: 9-0 Justice Sotomayor decision
  - Another in a long line of pro-arbitration Supreme Court decisions

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4th Circuit

- Several interesting decisions in the past year
- Support for the tactical decision to seek motion to dismiss when appropriate
- Mixed-messages about who are proper comparators when an employee/plaintiff alleges co-workers were more favorably treated ("similar in all material respects" vs. a "meaningful" comparison that raises an inference of discrimination)

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4th Circuit, cont'd

- *Billesdon vs. Wells Fargo Securities (4th Cir. Aug. 2026)*
  - Billesdon worked for Wells Fargo for 30 years, rising to a highly paid managing director position in California
  - At all relevant times, he was disabled with paralyzed bladder and colon
  - For many years, he managed with no accommodation
  - August 2017: Condition worsened and informed supervisor he would periodically need to step away from desk to use bathroom – request granted

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4th Circuit, *(Billesdon cont'd)*

- In early 2020, COVID made things easier, as Billesdon worked from home
- He relocated to Charlotte where supervisor assured him he could continue to work-from-home when needed when office re-opened
- 2021: (i) Wells Fargo commenced RIF, (ii) Wells Fargo announced return to work, and (iii) Billesdon received new supervisor
- So, Billesdon requested work-from-home as an accommodation

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4th Circuit, *(Billesdon* cont'd)

- October 2021: HR communicated with supervisors about the request
- In written communications, supervisors: (i) expressed surprise and skepticism, (ii) wanted to know how they could "push back," and (iii) expressed belief that granting the request would "delay the inevitable"
- Wells Fargo revenues continued to drop

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4th Circuit, *(Billesdon cont'd)*

- In November, Billesdon selected for RIF: approved in December, and implementation planned for February
- December: Wells Fargo return to work plan was delayed
- Told Billesdon that there was no need to decide his work-from-home request because it already was being met and request could be renewed when return-to-work was re-launched in March
- Billesdon fired in February

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4th Circuit, *(Billesdon* cont'd)

- Billesdon filed a lawsuit in WDNC asserting claims for: (i) failure to accommodate, (ii) disability discrimination, and (iii) retaliation
- He won at trial: (i) $6M in back pay, (ii) $14M in front pay, (iii) $100K emotional distress, and (iv) $2M in punitive damages
- Wells Fargo appealed

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4th Circuit, *(Billesdon cont'd)*

- Failure to accommodate claim reversed
  - There are two types of failure to accommodate claims: (i) not providing reasonable accommodation to a qualified individual, and (ii) denying employment opportunities to a qualified individual to avoid an accommodation
  - Billesdon pursued only the first type of claim
  - Wells Fargo: (i) allowed work-from-home at all relevant times, (ii) never denied work-from-home, and (iii) encouraged him to re-apply when return to work began
  - A reasonable jury could not conclude that Wells Fargo failed to make an accommodation that continuously was provided

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4th Circuit, *(Billesdon* cont'd)

- Discriminatory discharge – reversed
  - Billesdon was required to prove that his disability was a "but-for" cause of this termination
  - A discrimination claim "demands evidence of motive based on protected *status*"
  - A lengthy gap between knowledge of disability and adverse action negates causation
  - Here, the decision makers were aware of his disability for years before the termination decision
  - A reasonable jury could not find a causal connection

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4th Circuit, *(Billesdon* cont'd)

- Retaliatory discharge – affirmed
  - ADA prohibits retaliation for requesting an accommodation
  - "The timeline alone supports finding causation"
  - The decisionmakers learned of the work-from-home accommodation request in late October and by late October 2021 or November 2021, Billesdon was added to the RIF list
  - In addition to close temporal proximity, the written communications of decisionmakers suggested retaliatory animus
  - Surprise and skepticism; how could they "pushback;" "delay the inevitable"
  - The fact that Billesdon was discussed as one of several possible RIF candidates before the protected activity does not prevent a retaliation finding

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4th Circuit, *(Billesdon* cont'd)

- Remedies
  - Given these rulings, the court vacated some of the punitive damages and emotional distress damage awards
  - The court also trimmed the back pay award from $6M to $4.3M
  - The court affirmed the front pay award of $14M
    - While front pay is an equitable remedy, Wells Fargo failed to ask the trial court to decide the issue and let the jury decide, which prevented Wells Fargo from raising that issue on appeal
- In sum, Billesdon remains entitled to at least $18.3M

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4th Circuit, *(Billesdon* cont'd)

- Lessons
  - Retaliation claims are highly risky
    - Even if an employer has non-retaliatory reasons for a decision, if the adverse action occurs close in time to protected activity, you face jury trial risk
    - Written (email, text, etc.) discussions about employment actions often are discoverable and may reveal discriminatory or retaliatory animus
      - Consider conducting such discussions live with HR memorializing the decision but not everything everyone said
  - High-wage earners yield potentially sizable adverse action risk
  - Avoiding flatly "denying" an accommodation request can be helpful, if possible
  - Work-from-home remains a thorny issue

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Dieng v. Orkin (4th Cir. Aug. 2026)

- Dieng was a pest control technician
- This was a physically demanding job that required lifting equipment heavier than 50 pounds
- Dieng was injured at work in February 2016 and was out on unpaid leave until July 2016
- In July 2016, Dieng provided Orkin with medical records indicating that while he no longer could perform his pest control technician position, he could return to work in a less physically demanding position

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Dieng v. Orkin (cont'd)

- Orkin did not respond, and Dieng reached out again in August, seeking a light duty role
- Dieng's supervisor said he would check with HR, but no one from HR ever reached out to Dieng to discuss the situation
- In October, Dieng's lawyer sent a letter, reiterating that Dieng who remained on unpaid leave, was eager to return to work in a light duty role
- Orkin again failed to respond
- Dieng remained on unpaid leave through June 2017 when he resigned because no one at Orkin would speak with him about his light duty request

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Dieng v. Orkin (cont'd)

- Dieng filed a charge with EEOC and then a lawsuit
- Discovery revealed that: (i) two types of light duty positions (customer service and sales representative) had been available while Dieng was on unpaid leave, (ii) that Dieng would have accepted them, and (iii) other people were hired for them
- Orkin moved for summary judgment, which was granted:
  - Dieng could not perform essential functions of his pest control tech job and thus was not a "qualified" individual with a disability
  - Orkin provided a reasonable accommodation by providing an unpaid leave of absence
- Dieng appealed and 4th Circuit reversed

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Dieng v. Orkin (cont'd)

- The district court erred in focusing on whether Dieng could perform the essential functions of the pest control tech position
- It should have focused on whether he could perform the essential functions of the light duty position he requested
- The evidence showed that Dieng could have performed the essential functions of the customer service and sales representative positions

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Dieng v. Orkin (cont'd)

- The district court also erred when it concluded that the 16-month unpaid leave was a reasonable accommodation
- Sometimes, an unpaid leave of absence can be a reasonable accommodation
  - For example, if any employee has a short-term condition, a temporary unpaid leave of absence could be reasonable
- Dieng's condition, however, was permanent and an indefinite unpaid leave of absence was not reasonable
- This was particularly true because Orkin completely failed to participate in the interactive process
- While job reassignment may not be the preferred accommodation, it was reasonable here because positions that Dieng could perform were available

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Lessons

- When someone requests an accommodation, you need to engage in the interactive process
- Even if you feel like you have provided a reasonable accommodation, if you do not engage in the interactive process, you put yourself in a worse position if you have to defend your decision
- Job reassignment can be a reasonable accommodation in certain circumstances
- Don't forget to think about employees who remain on extended periods of unpaid leave

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EEO Update

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October 28, 2026